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## COVERING SOME OF THE LATEST DEVELOPMENTS IN TURKISH LAW

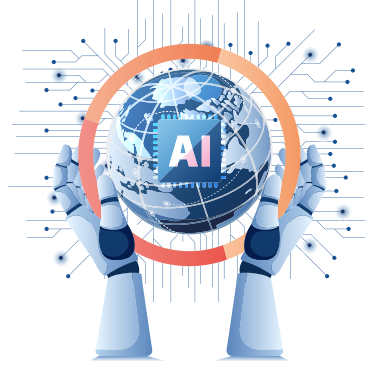
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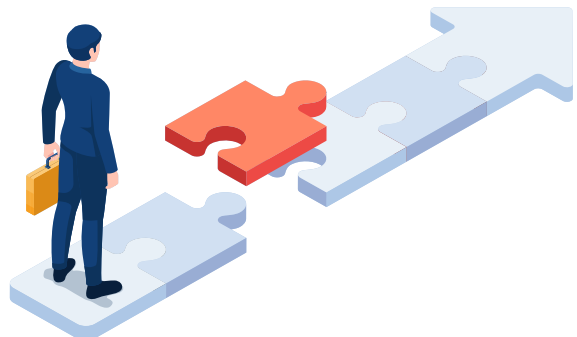
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## EDITOR'S NOTE

# As Istanbul settles into its winter and festive season, we are delighted to present the final 2025 edition of our newsletter, highlighting key legal topics and regulatory developments in Türkiye and beyond.

This issue features a series of articles on some of the most discussed subjects in today's M&A landscape, including merger control filing strategies before the competition authorities, financial assistance rules, gun-jumping risks, and mandatory tender offer requirements affecting publicly held entities.

We also address significant legislative developments, including an analysis of the key amendments proposed in the new draft Execution and Bankruptcy Code. As a second enforcement-related contribution in this issue, our Litigation team reviews international asset recovery proceedings from the standpoint of international litigation and arbitration.

Our Real Estate team, one of our regular contributors, provides an overview of the newly regulated "transfer of development rights," an emerging legal mechanism in Turkish law designed to secure land for public services.

Another article explores the increasingly relevant topic of AI-related hallucinations and the legal responsibilities associated with relying on such outputs.

This edition also includes practical, guide-style content on corporate procedures, such as the digitalization of corporate books.

Finally, we look at the concept of seasonal employment contracts, widely used in the tourism sector, as well as recent Constitutional Court decisions reshaping certain aspects of divorce law in Türkiye.

We hope you enjoy this final 2025 issue of our newsletter.

## 01.

## CITING GHOSTS: AI HALLUCINATIONS AND THE FUTURE OF LEGAL RESPONSIBILITY

*We are living in an era in which digitalization is accelerating and Artificial Intelligence (“AI”) technologies are reshaping both societal and professional practices. In the age of generative AI, where new developments emerge almost daily, the legal industry cannot remain unaffected by this transformation. As of 2025, AI is no longer a distant prospect for future debate; it has become an auxiliary tool and a strategic component in the practical work of legal professionals.*

According to a 2025 study by Thomson Reuters<sup>1</sup>, 80% of legal professionals believe that AI will have a significant or transformative impact on their profession within the next five years. The findings of the study demonstrate that AI delivers notable gains in speed, cost efficiency, and productivity, particularly in areas such as legal research, document review, e-discovery, and data management. Yet, alongside these advantages, the use of AI raises pressing concerns regarding accuracy, transparency, trust, and ethical responsibility. In this regard, the *black box* nature of AI and the increasingly debated phenomenon of AI hallucinations compel a re-examination of the boundaries of professional responsibility in legal practice. This article will first briefly address the question of what AI hallucination is and how it gives rise to contemporary legal concerns, and then conduct a concise comparative overview of some of the commonly cited court cases, ultimately proposing a limited guideline for Turkish law to adopt to ensure the safe and efficient use of AI.

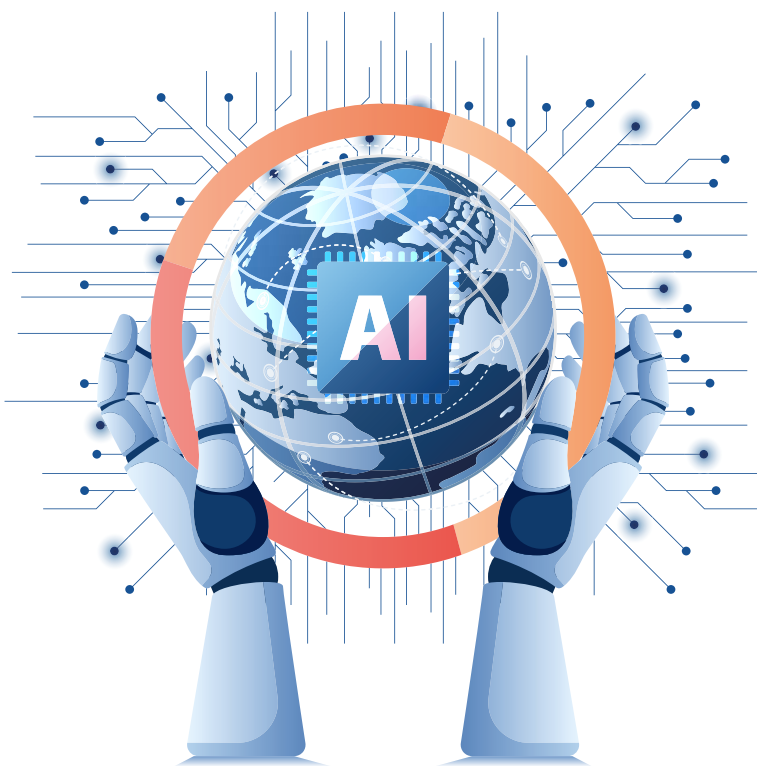
### When Machines Imagine: Understanding AI Hallucinations

Artificial intelligence systems, particularly large language models (“LLMs”), are often characterized as “black boxes.” Their internal decision-making processes remain opaque to the user, and it is often unclear which data, training inputs, or weight combinations directly influence the output.

*AI hallucination* emerges as a phenomenon closely linked to this black-box structure. It refers to situations where AI systems produce outputs that are unfounded, misleading, or entirely fabricated; often presenting fictitious sources, case law, or legal norms in a convincing manner, thereby creating a false impression of reliability for the user.

A recent study has demonstrated that even the most advanced AI tools developed for legal research are not entirely “hallucination-free”; rather, they generate

inaccurate or unfounded references at rates ranging from 17% to 33%.<sup>2</sup> The manifestation of this phenomenon in legal practice is most evident in the use of fabricated case law in pleadings, errors within data submitted to courts, and reliance on flawed authorities in decision-making processes. Accordingly, AI hallucination is not merely a technical issue but a critical concern directly implicating the accuracy of judicial proceedings and the integrity of professional ethics. [The AI Hallucination Cases Database](#) - created and maintained by Damien Charlotin<sup>3</sup>, Senior Research Fellow at HEC Paris and lecturer at Sciences Po with a research focus on AI and the law- systematically tracks this phenomenon, recording cases in which fabricated case law and erroneous arguments generated by AI tools have come under judicial scrutiny. As of December 2025, 692 cases have been identified, and the database continues to expand as new examples emerge.<sup>4</sup>



## Comparative Overview: Judicial Perspectives on AI Hallucinations

At the international level, it is evident that judicial bodies have not confined their responses to AI-related “hallucination” incidents to retrospective disciplinary sanctions, but have also developed preventive and procedural measures. In the United States, for instance, several federal courts have issued standing orders and local rules requiring attorneys to explicitly disclose any use of generative AI and to personally verify the accuracy of all legal citations. In this regard, Judge Michael Baylson’s (E.D. Pa., June 2023)<sup>5</sup> disclosure requirement and the parallel orders issued by Judges Gabriel Fuentes and Jeffrey Cole (N.D. Ill., 2023/24)<sup>6</sup> stand out as innovative and proactive procedural measures. Such directives adapt the “reasonable inquiry and verification obligation” embodied in *Rule 11 of the Federal Rules of Civil Procedure* to the realities of the AI era, thereby aiming to prevent fabricated case law from entering the record and to safeguard the integrity of judicial proceedings.

The number of judicial decisions worldwide that address AI hallucination is steadily increasing, often accompanied by the

introduction of various sanctions. In this context, the approaches adopted across different legal systems warrant a comparative look. Now, let’s take a look at some recent key cases.

### • *Mata v. Avianca* (S.D.N.Y, 2023 - USA)<sup>7</sup>

One of the earliest landmark cases in which the use of artificial intelligence was directly contested in legal practice is *Mata v. Avianca*, which attracted wide attention in 2023. On February 2, 2022, Roberto Mata initiated proceedings before the New York State Supreme Court. In responding to the defendant airline’s statute of limitations defense, the plaintiff’s counsel submitted a brief that incorporated responses generated by ChatGPT without independently verifying their accuracy. These submissions included case law that did not, in fact, exist, as well as misquoted authorities. In its decision dated June 22, 2023, the court sanctioned plaintiff’s counsel for failing to exercise the requisite professional diligence. Pursuant to *Rule 11 of the Federal Rules of Civil Procedure*<sup>8</sup>, the court imposed a USD 5,000 monetary sanction on the attorneys and ordered them to send letters to the judges and clients, explaining the circumstances of the misrepresentations.

The court emphasized that the mere use of a reliable AI tool is not inherently problematic; however, counsel bears an independent duty to ensure the accuracy of any submissions made to the court. Moreover, the sanction was directed not only at the attorney who prepared and signed the brief but also at the law firm where the counsel worked, holding them jointly and severally liable for the monetary penalty, thereby underscoring the institutional responsibility of law firms.

### • *Lacey v. State Farm* (C.D. Cal., 2025 - USA)<sup>9</sup>

In this insurance dispute, the plaintiff’s counsel relied on AI-generated fabricated court decisions, and the same errors persisted even in revised pleadings despite the inaccuracies being identified. The court characterized this conduct as tantamount to bad faith and imposed monetary sanctions totaling USD 31,100 on the law firms, along with an order to reimburse the opposing party’s expenses. In addition, the plaintiffs’ supplementary requests were struck from the record. This decision is noteworthy not only for the monetary sanctions but also for its procedural impact, as the denial of ancillary requests directly influenced the course of the litigation.

### • *Ayinde v. London Borough of Haringey; Al-Haroun v. Qatar National Bank* (High Court, 6 June 2025 - UK)<sup>10</sup>

The High Court of England and Wales examined the inclusion of AI-generated fabricated court decisions in two separate cases, characterizing such conduct not only as a professional breach but also as a threat to the integrity of the judiciary. In the Haringey case, the court imposed a wasted costs order of £2,000 and, in both cases, referred the responsible counsel to the Solicitors Regulation Authority (SRA)<sup>11</sup> and the Bar Standards Board (BSB).<sup>12</sup> The decision underscored that the use of AI in legal practice is acceptable only when accompanied by independent verification processes and that serious violations may fall within the ambit of “perverting the course of justice.”

• **Garner v. Kadince (Utah Court of Appeals, 2025 – USA)**<sup>13</sup>

The Utah Court of Appeals imposed disciplinary and monetary sanctions on attorneys Douglas Durbano and Richard Bednar for submitting a brief, prepared by a law student intern that contained fabricated case law generated by ChatGPT without independent verification. Referring to *Mata v. Avianca*, the court emphasized that the use of AI tools does not relieve counsel of their duty of verification, noting that this obligation rests with the signing attorney and cannot be delegated. As part of the sanctions, Bednar was ordered to reimburse opposing counsel for the costs incurred in responding to the brief, to refund the fees collected from their client, and to donate USD 1,000 to “And Justice for All”<sup>14</sup> within 14 days. This decision demonstrates that AI-related errors may result not only in monetary penalties but also in financial accountability toward the client and obligations of social contribution.

• **Tribunale di Torino, Sezione Lavoro - No. 1018/2025 (2025 - Italy)**<sup>15</sup>

The Turin Labour Court examined a pleading drafted with the assistance of AI, which consisted largely of irrelevant and fabricated legal references unrelated to the dispute over social security payment

orders. The court held the claims manifestly unfounded and emphasized that the use of AI does not excuse, but rather highlights, a breach of diligence. As a result, the counsel’s claims were dismissed, and the counsel was ordered to reimburse the opposing parties’ litigation costs. In addition, the court imposed further sanctions on the counsel, requiring payment of €500 to each opposing party and €500 to a public fund administered by the Ministry of Justice, explicitly on the ground that the unverified use of AI-generated content rendered the pleading frivolous and abusive.

### Turkish Legal Perspective: the Multi-Layered Responsibility of Attorneys

In Turkish law, when the strict procedural rules governing pleadings and submission of evidence are considered together with the attorney’s duties of diligence, candor, and loyalty –giving rise to professional, contractual, and criminal liability– the risks posed by the use of artificial intelligence must be addressed within a multi-layered regime of responsibility.

#### Legal Framework for Submission of Evidence and Duty of Candor

The Turkish Code of Civil Procedure numbered 6100 (“TCCP”)<sup>16</sup> provides a

detailed framework governing the content of pleadings and submission of evidence. Accordingly, a statement of claim must expressly set out the facts underlying the allegation, the evidence by which such facts will be proven, and the *legal grounds relied upon*. In this context, the parties are required to substantiate their claims in a conducive manner and to correlate the evidence with the alleged facts.<sup>17</sup> The use of AI-fabricated evidence will primarily result in such evidence being struck out of the case, thereby rendering the argument brought forward groundless.

TCCP also imposes on parties a duty to act in accordance with the principle of honesty and to ensure the truthfulness of their submissions.<sup>18</sup> A breach of this obligation may also result in the relevant party bearing all or a part of the litigation costs, excluding the judgment fee, regardless of whether the case is ultimately decided in their favor.<sup>19</sup>

#### Liability Regime for Attorneys

Apart from the procedural obligations imposed directly on the parties, the responsibility of attorneys also requires separate consideration. The role of the attorney encompasses professional duties grounded in diligence, candor, and loyalty. In Turkish law, the scope of an attorney’s liability may be examined under three categories: (i) professional liability under professional rules and disciplinary standards; (ii) liability towards the client, stemming from the attorney–client contractual relationship; and (iii) criminal liability in cases where the conduct of the attorney constitutes a criminal offense.

Professional liability of attorneys is framed by the Attorneyship Law (“AL”)<sup>20</sup> and the Union of Turkish Bar Associations’ Code of Professional Conduct (“UTBA Code of Conduct”). AL requires attorneys to perform their duties with diligence, integrity, and honor; to act in a manner befitting the trust inherent in the professional title, and to comply with professional rules<sup>21</sup>. This principle is linked not only to legal expertise but also to the public trust dimension of the profession. UTBA Code of Conduct also requires professional work to be conducted faithfully and in a manner that sustains public confidence; it prohibits conduct that would damage the profession’s reputation. The framework established by the AL and the UTBA Code of Conduct is directly applicable to errors arising



from AI-generated “hallucinations.” In particular, the inclusion of fabricated court decisions in pleadings could constitute a breach of the duty of diligence and the obligation to preserve the integrity of the profession. Such conduct would originally trigger disciplinary liability ranging from official warnings and monetary penalties to disbarment; however, in its decision of 6 March 2025, the Constitutional Court annulled the provisions regulating such sanctions, thereby creating the need for a future re-regulation of the disciplinary framework.<sup>22</sup>

Attorneys are also liable towards their clients under the attorneyship provisions of the Turkish Code of Obligations numbered 6098 (“TCO”)<sup>23</sup>, which require them to act with loyalty and diligence while safeguarding the client’s interests. In this context, submitting fabricated or misleading documents - including AI-generated fictitious court decisions- may be considered a serious breach of the duties of loyalty and diligence, potentially giving rise to attorneys’ liability in damages.

Finally, attorneys’ criminal liability under the Turkish Penal Code numbered 5237 (“TPC”)<sup>24</sup> must be addressed in light of the fact that the legal profession is defined as a public service under Turkish law<sup>25</sup>, which in turn subjects attorneys to provisions applicable to public officials in the event of criminal offenses. Within this framework, an attorney’s neglect of duty or failure to properly discharge professional obligations may, under certain circumstances, be associated with the offense of “abuse of office”<sup>26</sup> as regulated under the TPC. In particular, where AI-generated erroneous or fictitious court decisions are submitted to the court without verification, thereby causing harm to individuals, damage to the public, or granting undue advantage to third parties, such conduct may potentially fall within the scope of this crime.

## Looking Ahead: Reflections and Prospective Pathways for Turkish Law

Examples from foreign legal systems demonstrate that errors stemming from AI hallucinations, such as fabricated court decisions and misattributed citations, are not merely individual attorney lapses but a structural issue that threatens the integrity of judicial proceedings. Although no case

of this nature has yet been adjudicated in Türkiye, the sanctions and preventive measures emerging in comparative law suggest that the development of internal regulatory mechanisms to address similar risks is necessary. In this regard, the principal aspects for Turkish law can be summarized as follows:

- **Professional Diligence and**

**Disciplinary Dimension:** The duty of diligence set out in AL may equally come into play in cases of violations arising from the use of artificial intelligence. In light of the Constitutional Court’s annulment decision and the resulting regulatory gap, it is important that disciplinary sanctions be reconsidered so as to encompass such violations and clarified within the framework of professional conduct rules.

- **Procedural Framework:** Within the TCCP and the Turkish Code of Criminal Procedure, discussions could be initiated on procedural regulations requiring disclosure of the use of AI-based tools in pleadings and mandating that attorneys personally verify the accuracy of citations, similar to the standing order examples seen in the United States.

- **Institutional Responsibility and Education:** It would be valuable for law firms to establish internal compliance and accountability mechanisms, for bar associations and professional bodies to promote awareness through continuing legal education on AI, and, in the longer term, for law faculties to incorporate courses addressing the relationship between AI and law into their curricula. These measures could play an important role in raising awareness and strengthening the professional responsibility of legal practitioners.

Finally, it may be anticipated that Türkiye, in due course, will also move toward comprehensive legislation similar to the European Union’s AI Act<sup>27</sup>, addressing the legal liability dimension of artificial intelligence. Such an initiative would not only influence the practice of law but could also signal the emergence of a preventive and holistic approach to safeguarding the integrity of judicial processes more broadly.

*Şule Uluç, Batuhan Alparslan,  
Sena Eskicioğlu*



# 02.

## MANDATORY TENDER OFFER IN TÜRKİYE – A PRACTICAL GUIDE



*Although the concept of mandatory tender offer (“MTO”) is well-known and frequently discussed topic under Turkish capital markets law, it is useful to periodically refresh our understanding of its framework and implications. The MTO mechanism plays a critical role in mergers and acquisitions involving publicly held companies, as it serves to protect minority shareholders and ensure fairness in control transactions.*

In this article, we will revisit the MTO process in a practical Q&A format, focusing on the legal basis, procedural requirements, and recent developments under Turkish legislation. The Capital Markets Board of Türkiye (“CMB”) is the competent authority overseeing MTO processes, which are primarily regulated under the Capital Markets Law numbered 6332<sup>28</sup>, and the Communiqué on Takeover Bids (II-26.1) issued by the CMB (“Communiqué”)<sup>29</sup>.

## When Does Tender Offer Become A Requirement?

If a person or company takes control of a listed company – meaning acquisition of more than 50% of the voting rights, or the ability to elect the majority of the board regardless of the shareholding percentage – they must make a tender offer to all other shareholders. This tender offer requirement protects minority investors, gives them the opportunity to re-evaluate their investment decisions and allows them to sell their shares at a fair price when the control of the company changes.

## What is “Control Change”?

A “control change” takes place when someone gains the ability to run the company. This is not only about the number of shares, but also about the voting power and board control. For example:

- Owning more than 50% of the voting rights (directly or indirectly),
- Having the power to elect the majority of the board through privileged shares, and
- Acting together with others (concerted action – like voting agreements).

## Step-by-Step Process

Below is the summary of the process, as required by the CMB and regulated under the Communiqué.

1. Change of control is publicly announced: The new controlling shareholder must immediately disclose the change to the stock exchange in accordance with the Communiqué on Material Events Disclosure<sup>30</sup>.
2. Application to the CMB: Within 6 business days from the control change, the new controlling shareholder (with its investment bank/broker) applies to the CMB to start the tender offer process.
3. Approval and start of the offer: Once the CMB approves the application and the “information form” the tender offer must start within 6 business days. The offer period lasts between 10 to 20 business days.
4. Deadline: The tender offer must begin within 2 months after the control change. If it starts later, the offer price is increased by an extra interest (based on TLREF + 50%).

## Who Can Sell Their Shares?

Only those who already owned shares at the time the control change was publicly announced. The Central Securities Depository provides the official list of these shareholders.

## Price of the Offer

The CMB sets rules on how the price is calculated, usually based on average trading prices and recent purchase prices. If there is a delay, extra interest (TLREF + 50%) is added to the price. If payment is made with securities instead of cash, those securities must be publicly traded. The tender offer can only be made in Turkish Lira. In share acquisitions that give rise to the mandatory takeover bid obligation, any ancillary actions that can be directly included in the price paid, or any premiums and similar matters that would be paid if certain conditions accrued after the share transfer date, are taken into account in calculating the takeover bid price. If deemed necessary by the CMB, a valuation report may be prepared based on the share transfer date to determine the takeover bid price.

## Consequences of Incompliance

If the purchaser does not make the tender offer on time, the CMB can impose fines and also freeze the voting rights of the controlling shareholder until the tender offer is made. Additionally, the CMB may impose an administrative fine on both individuals and legal entities responsible for violating MTO requirements. The amount may reach millions of Turkish Lira for corporate violators depending on the severity and nature of the breach. Also, although not specifically regulated, theoretically, shareholders wishing to exercise their right to withdraw may also file a specific performance lawsuit against the entity that has failed to fulfill the MTO obligation.

## Exemptions

If any of the following cases exist, the obligation to make MTO does not arise:

- a. Control is obtained via a voluntary tender offer made to all shareholders for all their shares,
- b. No shares are bought, but control is gained by private written agreements between shareholders, provided that those agreements are approved by the general assembly meeting of shareholders, and those shareholders who vote against and record their dissenting opinion are granted a right of exit.
- c. A controlling shareholder's share ratio drops below 50% and before control passes to a third party, that same shareholder buys shares again and regains 50% of voting rights.
- d. When the transfer of control takes place between persons or entities who are already considered to be “acting together”,
- e. If the existing controlling shareholders transfer some of their shares to someone else and, as a result, the new person has 50% or less of the voting rights and control of the company is shared under a written agreement,
- f. If taking control of the company also triggers special exit or squeeze-out rights under the law,
- g. If the company makes a capital increase with rights for all shareholders to participate, and some shareholders use their rights and end up gaining control as a result,
- h. If someone gains control because of changes inside the company, such as when other shareholders' voting rights are suspended, the company reduces capital by cancelling shares, changing or removing voting privileges in the articles of association, or repurchasing its own shares.



## Special Cases

The CMB has discretion to exempt the new controlling shareholder from actually making the MTO if certain reasonable and justifiable conditions exist:

- Financial-distress recapitalizations – If the acquisition of shares/votes happens as part of a capital structure change that is necessary to strengthen a financially distressed public company.
- Immediate sell-down/commitment to sell – If the portion of the shares that triggers the obligation is disposed of and the acquirer does not use those shares at the general assembly of shareholders' meeting or change the board in the meantime.
- Parent-level change without a target control purpose – If the control changes at the parent company and is not aimed at taking control of the listed subsidiary.
- Privatization transactions – Sales of state owned shares.
- SPAC<sup>31</sup>-type mergers (before listing) with redemption of dissenters. Where a SPAC acquires control provided that shares of those who vote against the merger in the pre-merger general assembly of shareholders' meeting are bought back in accordance with the prospectus rules.
- When control is obtained by a bank or financial institution solely for the purpose of securing or collecting a receivable.
- Transfer of shares in order to fulfill a legislative provision determining the nature of shareholding.
- Involuntary acquisitions by operation of law. - If control is obtained involuntarily, for example by inheritance, court order, or similar legal reasons.

In such cases, the new controller can apply to the CMB for an exemption within 6 business days following the triggering of an MTO.

## Key Updates in Recent Years

- Who benefits clarified → only shareholders who had shares on the day of public announcement.
- Interest rule updated → delay interest now based on TLREF + 50%, replacing the old TRLIBOR system.
- Exemptions expanded → more situations where companies do not have to make an offer (inheritance, capital increases, technical control changes).
- Offer payments → if paying in securities, those must be publicly traded.
- Deadline rules tightened → CMB clarified timing and responsibilities for both the controlling shareholder and the investment institution.

The MTO process remains one of the most significant mechanisms in ensuring transparency, fairness, and investor protection in Turkish capital markets. Especially in M&A transactions involving publicly held companies, understanding the timing, exemptions and procedural obligations under the related legislation is crucial for both controlling shareholders and investors. Given its complexity and the potential regulatory and financial consequences of non-compliance, market participants are well advised to closely monitor CMB interpretations and periodically review their transaction structures in light of current regulations and practice.

 **Kayra Üçer, Candan Çırnaz**



# 03.

## GUN JUMPING IN MERGER CONTROL: LESSONS FROM RECENT CASES



*In a typical sprint, jumping the gun means moving before the starter's signal, an eager but costly mistake that can get even the best runner disqualified. In antitrust law, the term "gun-jumping" is used to describe the same behavior, a premature action aiming at control or influence in merger and acquisition cases. Gun-jumping occurs when parties to a transaction start behaving as if their deal is complete before competition authorities have given official approval. As such, whether through exchanging sensitive information, coordinating business decisions, or integrating operations/processes before clearance, companies may be involved in gun-jumping knowingly or unknowingly. However, just like an early sprint start undermines fair play on the track and results in disqualification, companies engaging in gun-jumping are fined severely by competition authorities worldwide.*

A very well-known example of gun jumping investigation in the European Union concerns the acquisition of a telecom operator in Portugal by a multinational company. Although the deal was notified to the European Commission (“EC”), later the EC found that parts of the deal had already been implemented before clearance, and premature exercise of control over the target was established through the share purchase agreement. Later in 2023, the Court of Justice confirmed the judgment, which also involves fines for early exchange of competitively sensitive information<sup>32</sup>.

In another gun jumping case, the Department of Justice (“DOJ”) and Federal Trade Commission of the US pointed out the importance of keeping the target “independent” prior to closing of the deal. In this case, although the transaction was notified through the pre-merger notification procedure, the parties are alleged to have engaged in pre-closing coordination and operational control of the target company before clearance. The evaluation resulted in a proposed settlement that includes, among other provisions, a severe monetary penalty<sup>33</sup>.

In April 2025, CADE, the Brazilian antitrust agency, fined two companies operating in the automotive industry for gun jumping. In the case that a producer’s tangible and intangible assets used in dealership operations were transferred to another company prior to the agency’s approval, resulting in an administrative fine<sup>34</sup>.

## Turkish Competition Authority's Approach

As can be seen, around the world, competition agencies are increasingly restricting the gun-jumping behaviors, imposing record fines and tighter scrutiny. Two recent gun-jumping decisions of Turkish Competition Authority (“TCA”) also reveals the same sensitivity in Türkiye. Under Turkish merger control regime, the parties to a transaction requiring the approval of the TCA must suspend implementation of such transaction until obtaining the approval of the TCA. According to the suspension requirement stated in Art 10 of Law numbered 4054 on the Protection of Competition (“Law

No. 4054”)<sup>35</sup> the parties must not close a notifiable transaction before receiving the TCA Board’s (Board) approval. As a result, the parties will be in violation if they fail to notify the Board or close the transaction while the Board’s assessment is still pending. The administrative monetary fine with regards to gun jumping constitutes 0.1% of the turnover generated in the financial year preceding the date of the decision on the incumbent undertakings. In the first case<sup>36</sup>, the TCA was notified about a transaction concerning acquisition of sole control in a payment services company by a fintech undertaking in August 2023. Considering the parties’ business activities, the TCA began a Phase II review of the deal, yet during the TCA’s evaluation process several complaints from third parties claimed that the parties had already realized the deal and coordinated their activities before clearance. The TCA conducted on-site inspections at the premises of both the target and the acquirer and found evidence showing that the acquirer,

- appointed the target’s senior executive and played a significant role in decisions regarding promotions, salary increases, and salary promotions for the target’s employees,
- participated in target’s management meetings and together they developed joint marketing and sales.

The TCA concluded that the acquirer exercised premature influence over the target which amounted to the acquisition of de facto control of the target before TCA clearance, resulting in an administrative fine for the acquirer. In a much more recent case, the Board decided to impose an administrative fine on the acquiring undertaking in another notified acquisition transaction. In this case, the Board announced that, despite the absence of an approval decision issued by the Board, the acquisition subject to authorization was treated as if it had been authorized, thereby violating Article 16 of Law No. 4054. The decision has been officially announced, yet the reasoned decision will shed more light on the facts and details of the case and the behaviors that led to the gun-jumping decision<sup>37</sup>.

## What Constitutes Gun Jumping, and How to Prevent It?

Substantive gun jumping involves implementing the transaction (e.g. transferring control, integrating operations, exchanging competitively sensitive information or influencing commercial decisions) before clearance. Procedural gun jumping describes situations in which the parties of a transaction fail to notify the competition authority of a notifiable transaction or complete it before the mandatory waiting period as regulated in respective merger control legislation. Although sharing information for due diligence or taking investment protection measures to the extent commercially necessary before closing is accepted by the competition authorities, exerting influence on the target or implementing the transaction before the acceptance decision is not acceptable. To prevent gun jumping, firstly, it is important to maintain operational independence of the parties involved until approval. Second, the parties should limit exchange of competitively sensitive data to clean teams and enter into confidentiality agreements defining the rules of information exchange. Integration plans should be evaluated carefully; preparations for integration may occur but no actual integration steps such as joint marketing, pricing or involvement in HR decisions should take place before clearance. Another precaution against gun jumping is training the teams and advisors involved in the transaction about gun jumping and keeping a clear record of pre-closing communication and decisions showing compliance with competition legislation.

Preventing gun jumping requires a clear separation between pre-closing planning and post-closing implementation. As such, companies need robust compliance protocols and seek specialized antitrust counsel early in the transaction process.

 **Mert Oğuzülgen,**  
**Neşe Nur Yazgan**

# 04.

## DRAFT FORCEFUL EXECUTION LAW PUBLISHED: A NEW LAW ON THE WAY



*The Turkish Execution and Bankruptcy Law numbered 2004 (“**Current Law**”)<sup>38</sup>, which has been in force since 1932, traces its origins back to the Swiss Federal Law on the Collection of Monetary Claims and Bankruptcy of 1889 (“**Model Law**”). The Execution and Bankruptcy Law numbered 1424 of 1929, which was based on the Model Law, was revised and given a new number, becoming the Execution and Bankruptcy Law No. 2004 that has been in use to this day.*

The Turkish Execution and Bankruptcy Law, which has been in force for over ninety years, has undergone numerous amendments to keep pace with changing conditions and has diverged significantly from its origins. Although this divergence has had legitimate aims, such as establishing the legal regulations most suitable for Turkish legal practice, there have long been discussions that the Current Law needed to be updated, especially after the enactment of the new Turkish Commercial Code numbered 6102<sup>39</sup> and the Turkish Code of Obligations numbered 6098<sup>40</sup> in 2011, as the execution and bankruptcy law has become outdated. As a result of these discussions, the Execution and Bankruptcy Law Scientific Commission was established, and the new execution and bankruptcy law prepared by the commission, originally titled "Draft Law on Forceful Execution" ("**Draft Law**"), was published on the website of the Ministry of Justice of the Republic of Türkiye on 14 August 2025.

The deadline for submitting opinions and suggestions on the Draft Law has been set as 31 January 2026, and it has been announced to the public that, following the receipt of these opinions, the Draft Law text will be discussed in the Grand National Assembly of Türkiye. We summarize below the most significant innovations envisaged by the Draft Law under the following subheadings: modernization of legal language, reforms in execution proceedings, reforms concerning the judiciary, provisions abolished by the Draft Law, and provisions introduced by the Draft Law.

## Modernization of Legal Language

The replacement of the title of the Current Law with "Forceful Execution Law" is a notable development. The Draft Law attempts to simplify the language of the Current Law by adapting it to modern Turkish and adopting a more contemporary legal language. The appropriateness of this name in terms of legal technique and practice, and whether it will contribute to current legal practices, is already a matter of debate. Since the term "forceful execution" is an umbrella term covering all individual and collective collection methods in the sense of execution and bankruptcy law, there is no problem with the choice of this term from a legal-technical standpoint. In other words, the term "forceful execution" is an umbrella concept that encompasses both individual execution proceedings and bankruptcy procedures, which, in essence, is a form of collective liquidation. However, it has also been criticized that the choice of the word "cebir," meaning "coercion, recourse to force," is inconsistent with efforts to simplify the language of the law.

## Reforms in Execution Proceedings

Under the Current Law, a rendered judgment is sufficient to initiate execution proceedings based on a judgment. By contrast, one of the most noticeable provisions of the Draft Law concerns the nature of first instance court judgments and the requirements for a judgment to be subject to execution. In this context, for first instance court judgments to be subject to execution, the Draft Law stipulates that: (i) the judgment must be final at the time it is issued, (ii) no legal remedy may be sought, or (iii) the appeal must have been rejected by the regional court of appeal.

In other words, if the Draft Law is enacted in its current form, it will not be possible to execute first instance court decisions without an appeal review. However, certain exceptions will remain in place for this rule: All types of alimony claims, bodily injury claims, claims for loss of support, and employee claims will continue to be executed without waiting for the appeal review, as was the case before. This regulation is a positive step in terms of reducing stay of execution procedures, which cause great hardship in practice. That said, the regulation has been subject to harsh criticism due to the delay in creditors receiving payment. Indeed, considering the lengthy trials in our country, making creditors, who have already waited for years for the first instance court decision, wait again until the end of the appeal stage is likely to upset the delicate balance between protecting creditors and protecting debtors.

Under the Current Law, there is no requirement to rely on any document to initiate execution proceedings without a judgment. In the Draft Law, however, it is mandatory to rely on a document in order to initiate the proceedings. In this context, it is a prerequisite that the creditor has: (i) a document or contract issued or approved by official authorities or competent bodies regarding the debt or collateral in question, (ii) a document proving the cause of the debt, or (iii) in execution proceedings where both parties are merchants, an uncontested invoice. Undoubtedly, this regulation raises concerns that the requirement for documentation in execution proceedings without a court order may negatively affect business life by prolonging the collection process for individuals who have a legitimate claim but lack written evidence. However, in our country, where there are currently over 10 million execution files, it is also true that this regulation will reduce the number of execution files by preventing the initiation of unnecessary execution proceedings and will speed up the proceedings. In this regard, entering into written contracts has become more important than ever.



## Reforms Concerning the Judiciary

The Draft Law abolishes the procedure for annulment of objections by applying to execution courts. As a result, an action for annulment of the objection can only be brought before general courts. The creditor against whom an objection has been filed will have the right to file a lawsuit for the annulment of the objection in accordance with the general provisions within 6 months from the date of notification of the objection, unlike under the Current Law. In addition, the Draft Law goes beyond this regulation and also envisages various changes in the time limits for different procedures.

Subject / Procedure	Current Law Provision	Draft Law Provision
Statute of limitations in compensation claims	<b>1 year</b> from the date on which the injured party becomes aware of the damage; in any case <b>10 years</b> from the act	<b>2 years</b> from the date on which the injured party becomes aware of the damage; in any case <b>10 years</b> from the act
Concordat – Provisional moratorium	<b>3 months</b> + the court may extend for up to <b>2 additional months</b> = maximum <b>5 months</b> in total	The court grants up to <b>4 months</b> of provisional moratorium; if a shorter period is granted, it may be extended but not to exceed <b>4 months in total</b>
Concordat – Definitive moratorium	<b>1 year</b> , extendable by up to <b>6 months</b> at the discretion of the court	Not less than <b>6 months</b> and up to 1 year; if deemed necessary by the court, extendable once only by up to <b>3 months</b>

Another innovation is the establishment of bankruptcy courts. Accordingly, bankruptcy courts will handle all claims, cases, complaints, and lawsuits related to bankruptcy proceedings, the annulment and closure of bankruptcy, and concordat. Furthermore, the relationship between bankruptcy courts and civil and commercial courts and other courts of law has been regulated as a functional relationship, and it has been stated that procedural rules relating to this function will apply. Unless otherwise provided by law, simplified proceedings will apply in a manner appropriate to the nature of the cases and matters heard in bankruptcy courts, and these matters will be heard urgently. The Draft Law stipulates that bankruptcy courts will also perform the duties assigned to them by this Draft Law and other laws.

## Provisions Abolished by the Draft Law

Unlike the Current Law, the Draft Law does not include provisions specific to negotiable instruments or collecting bank claims. This situation is interpreted as the removal of the procedures for enforcing negotiable instruments. While some commentators consider this to be a deliberate omission to be discussed in the Justice Commission of the Grand National Assembly of Türkiye, some authors believe that it means that the execution procedure specific to negotiable instruments has been completely abolished. We expect this issue to be clarified in the coming months.

## Provisions Introduced by the Draft Law

Maritime forceful execution has been regulated in a dispersed manner in various laws to date, creating difficulties and uncertainties in practice. Under the new Forceful Execution Law, provisions relating to maritime execution have been addressed with a holistic approach; it has been determined that the scattered and inadequate regulations in this area need to be consolidated. Furthermore, it has been emphasized that maritime execution should essentially be evaluated within the scope of execution and bankruptcy law. For this reason, it has been envisaged that the most appropriate solution is to compile the provisions specific to maritime forceful execution in a separate book titled “Maritime Forceful Execution” in the new law, aiming to make the regulations more understandable and to ensure uniformity in practice.

The Draft Law stipulates that any actions contrary to the mandatory provisions introduced to protect the public interest or the interests of persons not involved in the proceedings shall be deemed invalid. In this respect, the court may determine this invalidity at any stage in the disputes brought before it and render a decision accordingly.

The Draft Law modernizes the sale of attached properties by moving it to a digital environment. Under this framework, sales will be conducted through an electronic portal integrated with UYAP, the National Judiciary Information System, via auction; the aim is to ensure transparency and increase participation in auctions. Moreover, the debtor is granted a broader opportunity to sell their attached properties voluntarily.

The Draft Law, which is currently in the preparatory stage, represents a significant initiative to reform the existing system that has been in place for many years. The Draft Law aims to eliminate the inconsistencies created by the Current Law, as claimed by some commentators, and to find more effective solutions to the problems encountered in practice. This step, taken with the goal of strengthening legal certainty and justice, is expected to bring many innovations to the future of execution law. It should be noted, however, that changing or renewing the law will not automatically bring about concrete changes. The way to reduce the number of execution files or save companies from bankruptcy is not through legislative change, but through economic stability and reform. We will continue to closely monitor the process and developments and keep our valued readers informed.

 **Tolga Danışman, Tolga Doğan, Ekin Yağcı**

# 05.

## ARE PHYSICAL COMMERCIAL BOOKS GRADUALLY BECOMING HISTORY?

*Similar to other areas of business life, transactions of corporations are also becoming more and more digitalized. Although the legislation usually takes time to catch up with technological developments, digitalization steps are being taken in corporate/company secretary actions of companies in Türkiye.*



As the business world becomes ever more tech-driven, this inclination applied to corporate law rules and practices as well over the past decade, with, for example, the introduction of electronic general assembly system (*widely used by publically listed companies*), holding board meetings electronically and/or adopting board resolutions electronically, keeping records of bearer shares electronically, and conducting electronic applications over the Central Trade Registry System (“**MERSIS**”) as a prerequisite of registration applications. Following the requirements as to the e-Invoice (*e-Fatura*) and keeping accounting records and books electronically, the latest development in said digitalization process is introduced for non-accounting books of companies under the “Communiqué on Keeping Commercial Books Not Related to the Accounting of the Business in Electronic Environment” (“**Communiqué**”)<sup>41</sup>, which entered into force on 1 July 2025 and then further amended on 14 August 2025 and 20 September 2025.

Communiqué stipulates that certain companies must now keep their several commercial books that are not related to the accounting of the business in electronic format.

Considering the wide scope of its applicability, its implementation is vital for practitioners. We will address this new requirement below in a Q&A format.

### What Does the Communiqué Entail?

Initially, the Communiqué required certain companies to keep their share ledger, board of directors' resolutions book (*for joint stock companies*), board of managers' resolutions book (*for limited liability companies*), and general assembly meeting and negotiation book in electronic format over the Electronic Commercial Book System (“**ETDS**”). Yet, after a recent amendment introduced on 20 September 2025 (“**Amending Communiqué**”)<sup>42</sup>, keeping only the share ledger and general assembly meeting and negotiation book is mandatory, as of writing.

### Which Companies are Subject to Electronic Book Keeping Obligation?

According to the Communiqué, the obligation to keep the aforementioned books in electronic form is applicable to:

- (i) All companies<sup>43</sup> that will be incorporated as of 1 January 2026, and
- (ii) Among the companies incorporated before 1 January 2026, companies whose establishment or amendment of articles of association are subject to the approval of Ministry of Trade (“**Ministry**”). According to the “Communiqué on the Increase of Capital of Joint Stock and Limited Companies to New Minimum Amounts and the Determination of Joint Stock Companies Subject to Approval for Establishment and Amendment of Articles of Association”, these companies include banks, financial leasing companies, factoring companies, consumer financing and card services companies, asset management companies, insurance companies, holding companies established as joint-stock companies, companies operating foreign exchange offices, companies engaged in general retailing as defined by their specific legislation, warehousing companies licensed for agricultural products, product specialty exchange companies, independent auditing companies, surveillance companies, technology development zone management companies, companies subject to the Capital Markets Law numbered 2499, and free zone founder and operator companies.

For the rest of the companies, keeping the above-mentioned books in electronic format is optional.

The Communiqué introduced an additional exception to companies operating in the defense sector through its amendment dated 14 August 2025. According to this amendment, the obligation to keep certain books electronically does not apply to the “*companies that are direct or indirect subsidiaries and affiliates of the Presidency of Defense Industries and the Turkish Armed Forces Foundation, companies with Industrial Competency Assessment Program (EYDEP) A certificate, and companies that are the main contractors of Presidency of Defense Industries projects, which are all operating in*

*the field of defense industry*”.

### What Is the Procedure to Be Followed By the Companies For Converting Their Mandatory Non-Accounting Books to Electronic Form?

If a company is established as of 1 January 2026, its required books will be opened in electronic form by the trade registry automatically at the time of incorporation.

Companies that are already established and currently keep physical books are required to adopt a board of directors'/board of managers' resolution on converting their physical company books to electronic form, as well as authorizing certain representatives to conduct activities relating to these books. Said authorized persons can be designated for one or more books, and for taking one or more actions relating to these specific books (including saving, updating, deleting, and viewing records/resolutions). Companies can freely determine these authorized persons (*i.e.*, there are no specific requirements such as being a signatory or being on the company payroll).

Template of such resolution is provided as Annex I of the Communiqué. (It is also possible to change these authorized person(s) at a later stage by adopting a new board of directors'/managers' resolution, template of which is provided as Annex II of the Communiqué.)

Following the adoption of the resolution, companies should apply to a notary public in Türkiye together with their current physical books for closing current books and opening their electronic counterparts.

One important step, which may be missed by the companies in practice, is the need for further execution of a statement to be prepared by the notary public. Upon the application of a company, while closing the physical books and establishing the electronic format, notary officers prepare a statement regarding this change to be signed by company representatives. In practice, notaries may have different approaches to who the signatory of such a

statement should be. As per the commercial law, it is clear that sole or joint signatories without limitations are authorized to sign such a statement. In case these sole or joint unlimited signatories cannot be present at the notary's office, notaries may also find signatures of persons with limited powers as sufficient, as long as these powers relate to actions before the notary public.

According to the general principles of the TCC, companies should also keep the closed physical books (at the earliest until the expiration of a ten-year period following the date of the last record).

### What is The Deadline for Companies to Carry Out Necessary Procedures To Start Electronic Bookkeeping?

The Communiqué requires companies subject to this requirement to close their physical books (and simultaneously establish them in electronic format) within six months<sup>44</sup> from the date the obligation arises. According to the statements of Ministry officers, they consider the first date of the obligation arises for the existing companies as 1 July 2025, as being the enforcement date of the Communiqué, and therefore the current deadline is considered to be within the six months of such date, i.e., at the latest by 31 December 2025.

Also, as noted above, all companies to be established as of 1 January 2026 will be automatically subject to this requirement, and their electronic books will be established automatically by the trade registry at the registration of incorporation.

### Can a Company That Has Already Adopted Electronic Books Return to Physical Books?

As a main principle of the Communiqué, companies that have started keeping their books electronically (due to the requirement under the Communiqué or voluntarily) are not allowed, for any reason whatsoever, to revert to keeping such books in physical form.

However, there is one exception to this rule. Following the Amending Communiqué, board of directors' or managers' resolution books are no longer required to be kept

electronically. Accordingly, only for once, companies, which already started keeping their board of directors' resolution books electronically prior to the effective date of the Amending Communiqué, can discretionally revert to keeping their board of directors' resolution books as a physical book upon adopting another board resolution and applying to the Ministry.

Following review of the Ministry, *if accepted*, the Ministry closes the relevant electronic book on the ETDS, and provide the company with a document evidencing such closure. The applicant company will then apply to a local notary public, submit the document obtained from the Ministry and open new physical book.

### How Do Companies Keep Required Books Electronically?

Persons authorized under a board of directors'/managers' resolution can access to the electronic books of the company via ETDS either by (i) signing in with their e-Government (*e-Devlet*) account (*which exist only for Turkish citizens or residents*) with their e-signatures or mobile signatures, or, (ii) signing in directly at ETDS with user details (e.g., passport number or potential tax number, nationality and e-mail address), which are already notified to the system at registration.

Once accessed to the electronic books in the ETDS;

- For the share ledger, system user inserts the records on the latest shareholding structure, information on the shareholders (e.g., *shareholder's name, surname, or title, shareholder's contact information of any beneficial owners of the share-if any-, share's nominal value, number of shares owned and total share capital amount, share designation, share acquisition date, explanations regarding the acquisition/transfer of the share*) and any annotations relating to shares (e.g., *liens, usufruct rights, injunctions issued by judicial authorities, seizures, and similar restrictions*). Following to this initial registration, any changes occurred on these information (e.g., *share transfers, establishing new restrictions, removing current restrictions*) are reflected to the electronic share ledger as soon as possible.

• For the general assembly meeting and negotiation book, system user uploads scanned copy of the signed general assembly meeting minutes and its attachments after convening a general assembly meeting. In case the company is using e-General Assembly Meeting System, it is also possible to transfer the meeting minutes directly from the e-GAM software to ETDS.

• For the board of directors' resolutions book (if decided to keep electronically by the company voluntarily), once the board of directors' adopt a resolution, system user uploads a scanned copy of the signed resolution on ETDS.

In case the company adopts its resolutions electronically through e-Board of Directors software or through MERSIS, it is also possible to transfer the resolution directly from the e-BoD software or MERSIS to ETDS as long as all board members provide the approvals electronically.

The above processes are required only for the current/new records and resolutions. Therefore, system users are not required to scan and upload the resolutions adopted before the establishment of electronic books or upload previous shareholding information retrospectively.

Even though electronic copies of the general assembly meeting minutes and board resolutions are uploaded to the ETDS (*and the relevant physical resolution books are closed simultaneously with establishment of electronic books*), the Communiqué still requires the companies to keep the physical copies of the resolutions in their records.

### Is There a Specific Timing for Uploading Resolutions to or Updating Records in the ETDS?

The Communiqué is silent on the timing of uploading resolutions/updating records to the ETDS. According to the FQA document published by the Ministry, these actions should be taken "without any delay". Even though the wording does not refer to a specific period of time, in practice, it is argued that the resolutions should be uploaded ideally within the same day or on the following day after the resolution or change.

## What Can a Company Do If There Is a Mistake in the Records Made on ETDS?

In case of a mistake in the record/resolution uploaded to the ETDS, the system user should conduct the necessary revisions/corrections as soon as possible by uploading the correct version. However, in such a scenario, the previous version is not deleted over the ETDS, but it is rather designated as “passive” in a reachable but unalterable form, and the corrected version is recorded and can be accessed as a newer version.

## How Will Copies of the Resolutions/Records Be Obtained From Commercial Books That Are Kept Electronically?

Companies may need to obtain copies of their records and resolutions and submit them to public authorities such as trade registry, ministries, SSI, tax office, etc.

As the documents will be uploaded to a government controlled system (ETDS) and there will be no physical book, in the early days of the Communiqué, it is widely debated on whether getting a notarized copy of the signed resolutions is still required.

Such discussions are also triggered as provisions of the TCC and the Trade Registry Regulation requiring submission of “notarized copies” of the relevant resolutions/minutes/records for certain transactions are not amended despite the Communiqué. Even though the Article 13/2 of the Communiqué states that *the verifiable records of commercial books acquired from ETDS are deemed authentic copies of the actual records*, it is discussed on whether it is sufficient to abolish the TCC and the Trade Registry Regulation, which are in the higher levels of hierarchy of norms.

To clarify this conflict, the Ministry published a Circular<sup>45</sup> on 29 July 2025, stating that companies, which started to keep their commercial books over ETDS, should download copies with the verification code for submission to the trade registries, and accordingly no notarization process will be required for these resolutions.

Even though the legality of this practice may be challenged in theory, public authorities (especially the trade registry directorates) are acting in accordance with the Circular in practice and do not require submission of a notarized version.

Additionally, Capital Markets Board also announced in its Bulletin dated 9 October 2025 numbered 2025/53 that, based on a principle decision adopted by the Board, until otherwise resolved, they will not require notary approvals for the board of directors’ resolutions when obtained from ETDS.

## Conclusion

The Communiqué marks an important step in modernizing Türkiye’s commercial infrastructure. As business operations increasingly digitalized, book-keeping will have no choice but to follow. Therefore, even though the physical non-accounting books are not history as of today, it is likely that they will be seen less and less in future. Yet, we expect the total digitalization will be gradual and slow as the amendments to the Communiqué suggest.

 **Ufuk Yalçın, Melike Gençalp, Sıla Öz**



# 06.

## LITIGATING THROUGH CHAOS: ASSET RECOVERY AMID WAR, SANCTIONS AND TRADE DISRUPTION



*With the accelerating pace of globalization, financial systems and commercial networks have become deeply interconnected, allowing illicit financial flows and transnational crimes to evolve in both scale and sophistication. This growing complexity has compelled states to strengthen cooperation and harmonize their legal frameworks, making international conventions and cross-border enforcement mechanisms increasingly visible and essential components of global governance. Over the past two decades, the concept of “asset recovery” has become a cornerstone of international legal practice, shaped by conventions such as the United Nations Convention against Corruption (“**UNCAC**”), the Palermo Convention on Transnational Organized Crime, and binding United Nations Security Council resolutions on terrorism and weapons proliferation. International standards from the Financial Action Task Force (“**FATF**”) further require states to criminalize money laundering, treat terrorism financing as a separate offence, and ensure that proceeds of crime and related unlawful gains can be confiscated and returned.*

Asset recovery refers to the process of identifying, tracing, freezing, and ultimately securing assets, whether unlawfully obtained (such as proceeds of corruption, fraud, or other criminal conduct) or lawfully acquired but targeted for enforcement of a judgment or arbitral award. It encompasses both public-law mechanisms aimed at the return of illicit assets and private-law strategies designed to secure legitimate claims.

Globally, courts and enforcement authorities now rely on a diverse toolbox in order to establish a more effective asset recovery process. Some of these tools include provisional injunctions to prevent dissipation, freezing and seizure orders, mutual legal assistance between states, and recognition and enforcement of foreign judgments and arbitral awards.

However, despite these advances and tools for more effective cooperations, asset recovery still remains a complex matter for a variety of reasons. Assets often move across borders at high speed, hidden through layered transactions or placed under third parties' control. This makes timing and procedure critical: interim relief must be obtained quickly, cooperation with foreign jurisdictions must be coordinated efficiently, and enforcement strategies must be tailored to each case. What has emerged is a clear principle recognized worldwide: without robust asset recovery mechanisms, sanctions, court judgments, and anti-corruption measures risk being rendered ineffective. This article examines the mechanics of the asset recovery process in Türkiye and explores how the country's increasingly sophisticated arbitration culture and practice contribute to that framework.

## How Asset Recovery Operates in Türkiye

Asset recovery in Türkiye functions through a dual framework: criminal law tools for illicit assets and civil law mechanisms for legitimate claims against lawfully obtained assets.

### Freezing and Confiscation of Illicit Assets

When corruption, fraud, or systemic breakdowns threaten assets, the first priority is preventing dissipation. Turkish law provides prosecutors with strong

tools: courts may order the freezing of bank accounts, sequestration of property, or precautionary liens (*elkoyma*) during investigations. Upon conviction, courts may confiscate (*müsadere*) assets proven to be either proceeds of crime or instrumentalities used in the offence.

Türkiye's regime is embedded in global cooperation. As a signatory to UNCAC and participant in the FATF framework, it executes foreign requests to trace and freeze assets under mutual legal assistance treaties. In line with EU commitments, Türkiye is working toward a national Asset Recovery Office (ARO) to coordinate domestic agencies and streamline cross-border seizures.

Specialized laws strengthen this system in sensitive areas: Law No. 6415<sup>46</sup> (terrorism financing) and Law No. 7262<sup>47</sup> (weapons of mass destruction financing) allow immediate freezing of assets. Articles 127–128 of the Turkish Criminal Procedure Code<sup>48</sup> require judicial oversight and coordination with regulators such as the BRSA, Capital Markets Board, Treasury, and MASAK.

MASAK is central in practice. It collects financial intelligence, exchanges data with foreign FIUs, and can postpone suspicious transactions for up to seven business days under Law No. 5549<sup>49</sup>—a vital safeguard when funds are at risk of flight.

Civil law remedies supplement the criminal track: injunctions (*ihitiyati tedbir*) and pre-judgment attachment (*ihitiyati haciz*) allow private claimants to block transfers and preserve assets even outside criminal proceedings.

Amid war, sanctions, and trade disruption, these tools make Türkiye a credible jurisdiction to freeze and confiscate unlawfully obtained assets before they vanish.

### Enforcement of Arbitral Awards and Foreign Judgments

For lawfully acquired assets, Türkiye is an arbitration-friendly and enforcement-supportive jurisdiction. It ratified the New York Convention in 1992 with standard reciprocity and commercial reservations, which rarely obstruct enforcement. Most international disputes qualify as “commercial,” and most relevant states are

contracting parties.

Under Law No. 5718<sup>50</sup>, foreign arbitral awards must be final and binding before enforcement. Courts may refuse enforcement of arbitral awards only on the limited grounds under Article 62 of Law No. 5718 or Article V of the Convention (e.g., invalid arbitration agreement, lack of notice, excess of authority, non-arbitrability, or public policy).

In recent years, Turkish courts have adopted a more arbitration-friendly approach, interpreting “public policy” narrowly, rarely refusing enforcement in commercial disputes. They are barred from re-examining the merits, reflecting a strong pro-enforcement approach.

Foreign judgments are also enforceable under Law No. 5718, subject to reciprocity and public policy review as well as other limited grounds for refusal of enforcement. In practice, courts apply these requirements pragmatically, with growing consistency.

Together, these features make Türkiye a predictable jurisdiction for converting judgments and awards into recovery, even when sanctions or politics complicate enforcement elsewhere.



### ***Arbitration in Türkiye as a Gateway to Recovery***

Arbitration is often the precursor to asset recovery, and Türkiye offers a modern, reliable framework. The International Arbitration Law of 2001, modeled on the UNCITRAL Model Law, ensures international standards and party autonomy. Courts defer to arbitration clauses and intervene only to support proceedings—appointing arbitrators, ordering interim measures to preserve assets, or assisting in evidence gathering, as the case may be.

Türkiye's arbitration institutions, including ISTAC and ITOTAM, operate under internationally recognized rules and offer modern procedural tools—English-language proceedings, emergency arbitrator relief, and fast-track options, if chosen by the parties. This openness reinforces Istanbul's role as a hub for cross-border dispute resolution and ensures that parties have credible alternatives when other arbitral venues are constrained by sanctions or political pressure.

**Practical Illustration:** A creditor with an arbitral award against a debtor in Türkiye may seek interim relief even before enforcement—freezing bank accounts, blocking share transfers, or placing liens on real estate. Once recognized, the award can be swiftly converted into execution proceedings, turning a paper victory into real recovery.

In practice, arbitration—whether seated in Türkiye or abroad—offers creditors a direct and enforceable path to assets located in Türkiye. Combined with the country's pro-enforcement stance and relatively open posture amid sanctions, arbitration is a powerful tool for asset recovery in turbulent times.

Taken together, Türkiye's dual-track system of criminal, civil, and arbitral remedies ensures that assets—whether unlawfully obtained or lawfully held—can be effectively pursued and recovered, even amid global disruption. This dual framework underpins Türkiye's broader advantages as a venue for asset recovery, a point examined in the following section.

### **Benefits of Choosing Türkiye For Asset Recovery**

#### ***Neutrality in Sanction-Heavy Disputes***

Türkiye's balanced diplomatic stance allows it to maintain ties with multiple sides in international conflicts while avoiding the unilateral adoption of sanctions. This pragmatic neutrality translates directly into legal practice: Turkish courts and enforcement offices have not developed a habit of rejecting claims, refusing recognition, or obstructing enforcement merely due to a party's nationality or political affiliation. Nor have they adopted automatic seizure measures in response to broader geopolitical tensions. Similarly, national arbitration institutions—most prominently the ISTAC—have continued to accept disputes arising from jurisdictions affected by sanctions without imposing restrictive practices. This approach, contrasting with the more conservative stance of certain Western arbitration centres, positions Türkiye as one of the few jurisdictions where asset recovery proceedings can continue in a rules-based yet relatively flexible legal environment.

#### ***Banking Compliance Challenges***

While the judicial and arbitral processes remain accessible, practical obstacles may arise at the payment and collection stages due to banking compliance. Some Turkish banks apply stricter due diligence in transactions involving sanctioned persons or entities, which can cause delays or refusals in cross-border transfers. Creditors are, therefore, advised to conduct pre-enforcement due diligence on payment channels. Nevertheless, compared to jurisdictions where sanctions directly bar enforcement, Türkiye offers relatively greater flexibility and fewer systemic barriers.

#### ***Strategic Enforcement Opportunities***

While Türkiye offers a pragmatic and relatively predictable framework for enforcement, its approach should be understood as a measured autonomy rather than disregard for international norms. Türkiye consistently upholds its treaty obligations and recognizes the importance of global compliance mechanisms, yet it also exercises sovereign discretion in determining the domestic implementation of foreign sanctions or restrictions.

This calibrated stance allows Turkish courts to maintain the integrity of due process while avoiding undue interference with legitimate legal claims. As a result, enforcement proceedings can progress in Türkiye even when other jurisdictions encounter procedural impasses — not because Türkiye overlooks international principles, but because it ensures that such principles are applied within the boundaries of its own legal order.

Accordingly, creditors holding enforceable judgments or arbitral awards abroad may find Türkiye a strategically advantageous forum, particularly where assets are situated within its territory. In drafting cross-border contracts, parties may therefore consider Türkiye not only for its judicial efficiency but also for its balanced and principled approach to enforcement in complex geopolitical contexts.

### **Conclusion**

Against the backdrop of war, sanctions, and trade disruption, Türkiye offers creditors a rare blend of neutrality, modern arbitration infrastructure, cost efficiency, and openness to enforcement. While banking risks must be managed carefully, Türkiye stands out as a practical, reliable, and strategically advantageous venue for asset recovery in a fragmented global landscape. By leveraging Türkiye's unique position, clients can maximize their prospects of securing assets effectively and with greater certainty in an uncertain world.

 **Şule Uluç, Elif Köse Özgüç,  
Ahmet Özgür Coşkun**

## 07.

## THE LEGAL FRAMEWORK OF DIVORCE LAW IS BEING REDRAWN: LANDMARK RULINGS FROM THE CONSTITUTIONAL COURT OF TÜRKİYE



*In recent years, the Constitutional Court of Türkiye (“**Constitutional Court**”) has rendered a series of landmark decisions in response to judicial review applications<sup>51</sup> that have significantly influenced the fundamental principles of Turkish family and divorce law. These decisions, while not all leading to annulments of the rule in question, reflect a growing constitutional scrutiny over equality, personal rights, and family protection principles. Here we aim to provide an overview of some of the most critical decisions rendered as a result of the judicial review requests concerning matters ranging from the annulment of the rule obliging women to adopt their husbands’ surname upon marriage and the invalidation of the “**de facto** separation” rule, to the Constitutional Court’s upholding of the limitation period for adultery-based divorce and its rulings on compensation provisions.*

## Annulment of the Rule Requiring Women to Assume Their Husband's Surname

Article 187 of the Turkish Civil Code (“**Civil Code**”)<sup>52</sup> used to mandate women to take their husband's surname after marriage. Upon an objection filed by the 8th Family Court of Istanbul, the Constitutional Court held that this rule violated the constitutional principle of equality (Article 10 of the Constitution), finding no objective justification for different treatment between men and women. Accordingly, Constitutional Court decided to annul the provision with its decision numbered E. 2022/155, K. 2023/38, dated 22 February 2023, which shall enter into force nine months after its publication in the Official Gazette (i.e., on 28 January 2024).

However, although the Constitutional Court decided that the decision would enter into force on 28 January 2024 to prevent a gap in law due to the annulment of the relevant provision, the legal gap still remains: Today, it is still legislatively mandatory for women to adopt their husbands' surnames due to this gap and those who want to retain their maiden names must still file a lawsuit. This ongoing gap undermines the equality intended to be secured by the ruling and highlights the need for legislative action to codify the right to retain women's surname without judicial intervention.

## Annulment of the *De Facto* Separation Rule

Another recent development concerns the *de facto* separation rule set out in the Civil Code. Accordingly, if the divorce lawsuit is dismissed and the spouses could not establish a common life within three years as of the decision becoming final, a divorce used to be granted upon the request of either spouse based upon the Article 166/4 of the Civil Code. The 18th Family Court of Ankara filed an objection by arguing that this restriction violated fundamental rights and right to private life. The Constitutional Court concluded that the three-year period constituted a disproportionate restriction under Articles 13 (Limitation of fundamental rights and freedoms) and 20 (Privacy of personal life) of the Constitution and annulled the provision in question with its decision numbered E. 2023/116, K. 2024/56, dated 22 February 2024<sup>53</sup> to become effective nine months after its

publication in the Official Gazette (i.e., on 19 July 2025).

Yet, before the annulment entered into force, the legislature amended the said article with the Law numbered 7532, and reduced it to one year. This amendment effectively addressed the constitutional concerns by preventing unnecessary prolongation of proceedings and protecting the right to a fair and timely trial.

## Continuation of Marital Duty of Fidelity during Divorce Proceedings Found to be Constitutional

Article 185/3 of the Civil Code mandates spouses to remain faithful to each other until divorce becomes final. The 15th Family Court of Izmir filed an objection regarding the constitutionality of this obligation, on grounds that it violates the right to private life (Article 17 of the Constitution). However, the Constitutional Court upheld the provision with its decision numbered E. 2023/42, K. 2024/114, dated 30 May 2024, by concluding that this obligation serves a legitimate aim for protecting the family as an institution and does not violate the principle of proportionality.

While we understand that the Constitutional Court aims to protect the institution of the family, critics argue that lengthy divorce proceedings make this rule impractical and unfair, as it legally confines the spouses to a marriage that may have emotionally ended years ago and violates their right to respect for their private lives by imposing obligations on them.

## The Five-Year Limitation for Adultery-Based Divorce Upheld

Article 161/2 of the Civil Code dictates that if one spouse commits adultery, the other spouse is obligated to file a lawsuit within six months as of learning the adultery, which is an absolute ground for divorce, and in any case, within five years as of the act of adultery. Therefore, the rule sets a statute of limitations in terms of the divorce requests tied to adultery.

The 18th Family Court of Ankara filed an objection, by arguing that the rule violated Articles 20 (Privacy of private life), 36 (Freedom to seek rights), and 40 (Protection of fundamental rights and freedoms) of

the Constitution. The Constitutional Court unanimously upheld the rule with its decision numbered E. 2024/83, K. 2024/227, dated 25 December 2024<sup>54</sup> concluding that the statute of limitation prevents the at-fault spouse from facing an absolute threat of divorce indefinitely throughout the marriage, whereas alternative relative grounds for filing a divorce claim are preserved for the other spouse.

Accordingly, the Constitutional Court emphasized that the spouse, who discovers act of adultery after five years may still pursue divorce under other possible grounds (i.e., irretrievable breakdown of the marriage), and judicial recourse remains available.

## Considering a Shift from the Fault Principle to Independence from Fault?

The Turkish legal system recognizes the principle of fault in divorce cases. However, due to the negative practical consequences of the principle of fault, many countries have either abandoned it or limited its application. In Türkiye, for example, where court proceedings tend to be quite lengthy, the abolition of the principle of fault and the reform of the divorce law are highly debated topics among scholars.

Although the term “fault” appears exactly 31 times in the Civil Code (*10 of which<sup>55</sup> are under the provisions of divorce*), it is not explicitly defined in the Civil Code<sup>56</sup>. As stated in the doctrine, it is also impossible to derive a consistent principle regarding what constitutes fault when examining court rulings.<sup>57</sup>

It is possible to attribute fault to one of the parties in terms of absolute grounds for divorce<sup>58</sup>. However, the fact that fault analysis is also carried out with regard to the relative grounds for divorce based on the fundamental breakdown of the marriage as provided for under Article 166 of the Civil Code is an indication that our legal system continues to govern the principle of fault and that the principle of fundamental breakdown of the marriage is not applied.<sup>59</sup> Thus, the doctrine states that, in divorce lawsuits, if one party proves that the marriage has become intolerable without attributing fault to the other party, the judge is not obliged to ex officio investigate the parties' fault.<sup>60</sup>

However, the Court of Appeals precedents indicate that a spouse's divorce lawsuit filed under Article 166 of the Civil Code, which does not attribute any fault to the other spouse, should be dismissed by citing the principle<sup>61</sup> that no one can claim benefits or rights based on their own fault.<sup>62</sup> In other words, even in cases of relative grounds for divorce where fault is not required, the Court of Appeals has ruled that the more at-fault party's right to divorce is barred.

This approach is highly criticized by the scholars and practitioners. The prevailing opinion (*which is also supported by the former President of the Court of Appeals 2<sup>nd</sup> Civil Chamber, Ömer Faruk Gençcan*<sup>63</sup>) indicates that it is meaningless to maintain a marriage that has been shaken to its foundations based on the principle of fault; therefore, the concept of fault should not be effective in divorce proceedings and should only be considered effective in terms of alimony or material or moral compensation entitlements resulting from divorce. In other words, even if the plaintiff spouse is seriously at fault, the judge must decide on divorce if there is no longer any benefit worth protecting.

A solution introduced in practice is to finalize the lawsuit in terms of divorce when the parties have a mutual consensus on divorce and to ensure that the consequences of divorce and financial obligations are examined separately. Although the Court of Appeals concluded that the examination of divorce and its consequences are independent of each other; there may still be a need for fundamental reform in Turkish law in terms of the fault principle.<sup>64</sup>

## Considering Mandatory Mediation in Family Law Disputes?

The Ministry of Justice is revisiting a proposal to introduce mandatory mediation for family law disputes, as confirmed by the Minister of Justice, Yılmaz Tunç<sup>65</sup>, in August 2025. While mediation could be beneficial in exceptional cases such as uncontested divorces, it raises serious concerns in cases involving violence or power imbalances. Applications for protective measures under Law numbered 6284 on the Protection of the Family and the Prevention of Violence against Women<sup>66</sup> have increased forty-fold in ten years<sup>67</sup>, underscoring the prevalence of domestic violence.

Without judicial oversight, mandatory mediation could pressure victims into waiving their rights or reconciling under coercion. While the intention to reduce court workload is understandable, effective reform must ensure safety and equality. Existing legal mechanisms, such as attorney-drafted agreements under Article 35/A of the Attorneyship Law, already allow for quick and amicable divorces without undermining legal protection.

## Conclusion

The Constitutional Court's recent jurisprudence demonstrates its growing role in balancing state interests and individual rights in family law. While certain rulings, particularly those on gender equality, represent significant progress, others reveal persistent gaps between legal ideals and practical outcomes.

Meaningful reform should focus on transitioning from a fault-based to a no-fault divorce system and addressing the systemic causes of delay and inequality. Any move towards mandatory mediation must also safeguard victims and ensure compatibility with Türkiye's social realities and international obligations. Only through such holistic reform can family and divorce law align with constitutional and human rights principles.

 **Ayşe Hergüner Bilgen,  
Nehir Demirkol, Alara Akman**



# 08.

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## TRANSFER OF DEVELOPMENT RIGHTS FINALLY GAINS LEGAL GROUND

*Rapid urbanization in Türkiye, driven by socio-economic changes, increases the demand for new construction - especially in major cities facing high population density and pressure for urban regeneration. Urban planning efforts aiming to meet this demand must include not just new buildings but also public service areas like roads, parks, schools, and healthcare facilities to ensure healthy urban development.*



However, because of limited land availability, planners often have to designate these public service areas on privately owned land. In such cases, the development readjustment share (“**DRS**”) (düzenleme ortaklık payı [DOP] in Turkish) mechanism under the Zoning Law numbered 3194 (“**Zoning Law**”)<sup>68</sup> comes into play: municipalities deduct a certain portion of private land to allocate space for public services without any compensation. The rationale behind this uncompensated deduction is that the implementation of a zoning plan, together with the creation of nearby public service areas, increases the overall value of the remaining land; thus, the landowner is deemed to be compensated through this appreciation in value. When municipalities reach the legal DRS limit, they must use expropriation, which imposes a heavy financial burden because they must pay expropriation compensation to landowners. In summary, municipalities have two primary legal mechanisms for creating public service areas: (i) allocating such areas for public services without compensation through the DRS mechanism, and (ii) expropriating privately owned land when the DRS limits are reached. In this article, we will focus on a third method, an alternative approach developed to complement these two mechanisms, to create public service areas without breaching legal limits for DRS or harming public budgets.

New regulatory amendments for developing alternative models while also protecting the principles of healthy urbanization have long been on the agenda. Finally, the long-awaited regulation came into effect: transfer of development rights. Simply put, transfer of development rights (“**TDR**”) allows the unused construction rights of one privately owned parcel to be transferred to another privately owned parcel. The transferred asset is not the land itself but the development rights granted to it.

In fact, TDR has been a planning tool used in the United States and several European countries. Türkiye has recently followed suit and introduced regulations on TDR to minimize interference with property owners’ ownership rights during planning processes and to reduce the public’s financial burden.

Below, we (i) introduce the concept of TDR, including its historical background, (ii) identify the parties involved in its

implementation, and (iii) review recent legislative actions that clarify, and, to some extent, legalize the process, together with our analysis of the potential impact of this new regulation on urban planning practices.

## Background

TDR is, as a matter of fact, not an entirely new concept in Turkish legislation. As a concept, it was already recognized and available under the Law numbered 2863 on the Protection of Cultural and Natural Assets (“**Law No. 2863**”)<sup>69</sup> and the Law numbered 6306 on the Regeneration of Areas Under Disaster Risk (“**Law No. 6306**”)<sup>70</sup> and only under specific conditions in exceptional cases. For instance, under Law No. 2863, this mechanism could be utilized when development rights were restricted due to the presence of registered cultural properties, conservation areas, or preservation-oriented zoning plans. In such cases, the affected development rights could be transferred to designated development zones as outlined in zoning plans. Similarly, under Law No. 6306, the exercise of TDR depended on whether the property was located within a risk zone, a reserve building area, or was classified as a risky structure.

However, although both laws gave the Ministry of Environment, Urbanization, and Climate Change (“**Ministry**”) the authority to determine the procedures and principles regarding the implementation of the transfer of development rights, the Ministry has not introduced any regulations so far. Due to the absence of secondary legislation setting forth the rules and procedures regarding its implementation, the TDR mechanism did not see significant practice in Türkiye.

While the concept of TDR was recognized under the aforementioned legislation, the Zoning Law itself never included a provision regarding TDR. However, despite the lack of a legal basis for TDR in zoning legislation until now, some municipalities in practice allowed TDR within their jurisdiction by inserting relevant clauses into the zoning notes of their development zoning plans (nazım imar planı in Turkish) and implementation zoning plans (uygulama imar planı in Turkish). Yet, since this practice lacked a legal basis, the courts have, unsurprisingly, frequently annulled such provisions when challenged.

## Current Situation

Following years of uncertainty about the legality of the municipal acts concerning the TDR, the Law numbered 7554 Amending the Village Law and Certain Other Laws published on 12 December 2024 (“**Omnibus Law**”)<sup>71</sup> has finally introduced the legal basis for TDR into the Zoning Law. Subsequently, the Ministry regulated the procedures and principles for the implementation of TDR through the Regulation Amending the Regulation on Land and Plot Arrangements (“**Regulation**”).<sup>72</sup>

Accordingly, when a privately owned parcel (“**Transferor Parcel**”) cannot fully or partially benefit from its construction rights because the zoning plan designates it as a public area or public service area, the Regulation now allows the transfer of the corresponding construction rights to another privately owned parcel (“**Transferee Parcel**”) in exchange for transferring the title of the Transferor Parcel free of charge to the relevant administration.

Areas owned by private legal entities that are designated as public and public service areas in the implementation zoning plan will first be allocated for public services by deducting the DRS under Article 18 of the Zoning Law; if the legal DRS limit is exhausted, areas owned by the public or the State Treasury (meaning the legal entity of the State concerning public administrations within the scope of the general budget) will be used. If the administration cannot acquire land through these two methods, or if it reaches the maximum legal allocation limit, it may implement the TDR.

Prior to this regulation, the main method for creating public service areas was expropriation when the limits of the DRS were exhausted. However, when the budgets of the authorities responsible for expropriation fell short, the expropriation processes stalled, leaving private landowners neither compensated nor able to use their properties. As a result, such landowners filed lawsuits against the authorities for unlawful possession, and courts often ruled in favor of compensation. With the introduction of TDR, the legislator aimed both to transfer public service areas into public ownership without financial burden on the administration and to prevent lawsuits related to unlawful possession.

## Procedures and Principles Regarding Implementation

The transfer will only take place between privately owned parcels located within the same province, and the Transferee Parcel will be determined by the zoning plan decision of the relevant administration. To initiate the transfer, the owner of the Transferor Parcel or the institution providing the public service must submit a formal request, provided that both the owner(s) of the Transferor Parcel and the owner(s) of the Transferee Parcel approve the transfer.

For the transfer process, a valuation commission established by the administration must first conduct a valuation of both the Transferee Parcel and the Transferor Parcel based on the principles used for expropriation compensation. This valuation will form the basis of the transfer. The determined value will not be less than the average value set by at least two licensed real estate appraisal companies authorized by the Capital Markets Board. In addition, when determining the value of the Transferor Parcel, the value of the

unutilized development rights shall be taken into account. However, the owner(s) of the Transferee Parcel and the owner or shareholders of the Transferor Parcel must agree on the valuations made and on the proposed TDR.

Other key procedures and principles regarding the implementation of TDR are as follows:

- If the entire development rights of the Transferor Parcel cannot be transferred, the administration and the owner of the Transferor Parcel will offset the value corresponding to the non-transferred rights, provided that this amount does not exceed 20% of the total value of the development rights;
- Additionally, all buildings and ownership rights on the Transferor Parcel will be transferred free of charge or abandoned free of charge in favor of the relevant administration or institution;
- As a result of TDR, and upon the free abandonment of the Transferor Parcel to the public, the administration will establish a new ownership status on the

Transferee Parcel;

- In planned areas, the construction area based on the construction coefficient (*emsale esas inşaat alanı* in Turkish) on the Transferee Parcel may increase up to the maximum ratio specified in the zoning plan or its provisions, but in any case, not exceeding 30%; and
- The unit price per square meter of the Transferee Parcel shall not exceed that of the Transferor Parcel.

## What Is Next?

Municipalities are now expected to include regulations on TDR in their zoning plan notes. This step will enable the implementation of development rights transfers.

The new regulations are expected to reduce the financial burden of expropriation on public authorities. It is also highly likely that there will be a decrease in lawsuits filed by landowners alleging unlawful dispossession without expropriation.

 **Serkan Gül, Nazım Kurt, Tunç Çatal**



# 09.

## FROM BOARDROOM TO REGISTRY: PRACTICAL INSIGHTS ON TRANSFER OF REPRESENTATION AND TRADE REGISTRY PRACTICE



*In joint stock corporations, representation is vested in the board of directors. However, as companies grow and expand, it often becomes necessary to adapt or diversify the way representation is structured. To address this need, the Turkish Commercial Code numbered 6102 (“TCC”)<sup>73</sup> allows boards of directors to delegate representation authority, provided that at least one member retains unlimited representation powers.*

Delegation is possible if the company’s articles of association permit it, and it requires the preparation of internal directives as well as clear allocation of authority. These steps must be registered with the trade registry and published in the Turkish Trade Registry Gazette, in line with both legislation and the practical guidelines published by the relevant trade registry offices.

Because registry practices may differ, this article focuses on the approach of the Istanbul Trade Registry, covering the determination of signatories, the electronic application process via the Central Registry System (“MERSIS”), and key lessons learned in practice.

## Election of Board Members and Designation of Unlimited Signatories

The general assembly elects board members. Some practical points to consider during these meetings are as follows:

- **Details to Include in General Assembly Minutes:** The resolution regarding the election of board members must be recorded in the general assembly minutes, specifying the number of board members, their identity information (Turkish ID number or foreign ID/potential tax number), and their addresses. (Additional requirements apply for appointing a legal entity to the board.)
- **Appointing at Least One Unlimited Signatory from the Board:** Following the general assembly meeting at which the members of the board of directors are appointed, the board must adopt a resolution appointing at least one member as an unlimited signatory. Otherwise, it is not possible to proceed with the electronic application through the MERSIS system.
- **Duty Acceptance Declaration and Signature Declarations:** After the general assembly meeting where board members are determined, a duty acceptance declaration and notarized signature declaration must be submitted for board members when applying to the trade registry. For automation, “Authorization Acceptance Process” module was introduced in MERSIS. To this end, the requirements for the following persons are different and can be summarized as follows:

Appointees who are;	Duty Acceptance Declaration	Notarized Signature Declaration
<b>(i) Turkish citizens with the new ID card</b> (and therefore have previously provided their signature samples and have access to the e-Government system),	- (to be performed over MERSIS)	-
<b>Turkish citizens who do not have the new ID card</b> but have access to the e-Government system	- (to be performed over MERSIS)	✓
<b>Foreigners</b> who do not have access to the e-Government system or provided a signature sample	✓	✓

## Internal Directive And Authorized Signature Authorities

### What Should be Considered When Preparing an Internal Directive?

Under Article 371/7 of the TCC, representation powers can be delegated through an internal directive, approved by the board, registered and published. Internal directives are frequently used as a general management tool in companies with a large number of executives and managers to enable the company to conduct its business. Trade registries have different practices with regard to the content of the internal directive, and it would be useful to review the relevant registry's sources while drafting the relevant documentation (e.g., Istanbul Chamber of Commerce's informative text dated 31 March 2023).

For instance, the Istanbul Trade Registry requires that internal directives:

- Define the scope (authority levels/signature groups) and limits of limited representation authority, with the procedures and principles governing the exercise of such authority (individually/jointly). Although this is the rule, in practice, the Istanbul Trade Registry permits inclusion of unlimited authority in the internal directive if the internal directive expressly grants a signature group/title with unlimited representation authority. In this case, the unlimited representation authority should be clearly explained in the text as “unlimited representation authority in the broadest sense—in all matters” and that the group/level/position to which this authority is granted should be clearly defined.
- Be dated and numbered, with no names of appointees included.
- Be signed on every page by the board members who signed the decision to approve the internal directive.
- Be replaced, registered, and published in full with a different date and number if amended, rather than being updated partially.

In practice, it is advisable to consult with public and private institutions, such as certain governmental agencies or banks with which the company frequently interacts, to ensure the wording of internal directives (or their relevant parts) is acceptable to them.

## What Should Be Considered While Preparing the Board of Directors' Decision Determining Limited Signatory Authorities?

Signatories who are authorized according to the internal directive must be appointed by a separate board resolution, specifying which internal directive the authorization is based on.

Until recently, the company's internal directive had to be registered and announced first, and then appointments had to be made according to this internal directive through a separate application. As of 16 May 2025, MERSIS and trade registries allow companies to submit both resolutions regarding (i) the adoption of the company's internal directive and (ii) the appointment of signatories in accordance with these directives in a single application.

Based on our experience in various registries, key points to observe are as follows:

- The board resolution regarding the appointment must include the name, surname, nationality, identity number, place of residence, and signature group or signature level (as defined/mentioned in the internal directive) to which the persons are to be appointed.
- Board members appointed as limited signatories are only authorized for the duration of their board membership, which should be mentioned in the resolution.
- A person cannot simultaneously hold both unlimited and limited representation authority. While entering the appointments in MERSIS, the options other than "Limited Authorized (Authorized as specified in the Internal Directive) (Sınırlı Yetkili (İç Yönergede Belirtilen Şekilde Yetkilendirilmiştir))" as "the type of authority" should not be selected if the "Authority Title (Yetki Unvanı)" section will be filled with a signature group defined under the internal directive:

Yetki Unvanı	<input type="text"/>
Yetki Şekli	<input type="text"/>
Yönetim Kurulu Kararı Tarihi	<input type="text"/>
Yetki Süresi	<input type="text"/> Münden Temsile Yetkilidir. <input type="text"/> Müstereken Temsile Yetkilidir. <input type="text"/> Herhangi Birisiyle Müstereken Temsile Yetkilidir. <input type="text"/> Herhangi İkişile Müstereken Temsile Yetkilidir. <input type="text"/> Herhangi Üçüyle Müstereken Temsile Yetkilidir. <input type="text"/> Herhangi Dördüyle Müstereken Temsile Yetkilidir.
Arama Tür	<input type="text"/>
Uyruk	<input type="text"/> Ticari Temsilci (Taşınmazları Devredebilir veya Bir Hak ile Sınırlandırılabilir.) <input type="text"/> Ticari Temsilci (Taşınmazları Devredemez veya Bir Hak ile Sınırlandıramaz.)
TCKNo/Seri	<input type="text"/> Sınırlı Yetkili (İç Yönergede Belirtilen Şekilde Yetkilendirilmiştir.)

The following table summarizes the key rules and exceptions regarding the assignment of unlimited and limited representation authority within joint-stock companies:

Table: Rules on Unlimited and Limited Representation Authority	
Rule	Exception / Practical Note
A person cannot simultaneously hold both <b>unlimited</b> and <b>limited</b> representation authority.	If an unlimited authorized signature group is expressly defined in the internal directive, this constitutes an exception.
A person appointed as <b>unlimited</b> representative with his/her individual signature cannot also be appointed as a <b>limited</b> representative ( <b>individually or jointly</b> ) for specific matters.	-
A person appointed as a <b>joint unlimited</b> representative cannot also be appointed as a <b>limited individual</b> representative.	-
A person appointed as a <b>joint unlimited representative</b> cannot also be appointed as a limited joint <b>representative with the same persons</b> with whom they share unlimited authority.	However, the internal directive may stipulate that a limited authority must be exercised jointly with a joint unlimited representative. In this case, the unlimited authority is not restricted; instead, the limited authority is conditioned upon the involvement of the unlimited representative.
A person cannot be assigned to more than one signature group/level/title defined in the internal directive.	However, the internal directive may stipulate that the signature groups above can exercise the authorities of below group/groups.
The appointment resolution should only refer to the <b>date and number of the internal directive</b> ; details of the authorities should not be restated in the resolution.	-
A person cannot be appointed to a title that is not defined in the internal directive.	Example: If only Groups A, B, and C are defined, a person can be appointed as a "Group B Signatory," but not as "Finance Manager (Group B Signatory)." Although this title may be granted in the scope of company's internal operations, such an appointment cannot be registered in the trade registry and made public via announcement in the Trade Registry Gazette (and be applicable to the third parties).
-As per the recent updates on MERSIS, when a new internal directive is adopted, the resolution for appointment of signatories as per the new internal directive must explicitly state whether the existing authorities continue without change or whether powers/titles are changed.	- If unchanged: resolution should state that previous authorities continue without modification.

## Electronic Application Over MERSIS

Once documents regarding the company's signatories are ready, the electronic application must be completed through MERSIS.

As of 14 April 2025, individuals who have access to the e-Government (e-Devlet) system (i.e., Turkish citizens and foreigners with a foreigner identity number provided by Turkish authorities) are only able to log in to MERSIS via the e-Government portal, or using an e-signature / mobile signature method, to ensure more effective verification and security in MERSIS.

When entering appointments via MERSIS:

- As board members can only be appointed for a limited period of time, the end date of their term or position must also be added to the system.
- Signatory titles must match those in the internal directives and board resolution, and the appointed signatories must perform authorization acceptance in MERSIS (as explained above).

## Conclusion

Procedures related to the representation of joint-stock companies are not merely a matter of fulfilling formal requirements; they are critical and directly affect the company's operations and the security of commercial life. In practice, even minor deficiencies in the document set drafted for the election of board members, appointment of signatories, preparation of internal directives, and processes conducted through MERSIS can lead to rejection of applications by the trade registry. Consequently, companies suffer losses of both time and effort, as well as transaction costs.

Key takeaways for companies include:

- General assembly and board of directors' resolutions must fully comply with the details stipulated in the law and relevant trade registry practices.
- Internal directives must be prepared in line with the needs of the company and the practices of the relevant trade registries.
- Signing authorities must be assigned in a manner that does not create conflicts of authority.
- Actions to be conducted through MERSIS must be carefully monitored, and the authorization acceptance process must be completed correctly.
- Considering that there may be differences in practice from one registry to another, the relevant registry's requirements must be confirmed before submitting the application.

Ultimately, well-structured representation provides both managerial flexibility and legal security. Therefore, it is of great importance to regularly follow current trade registry announcements, prepare all necessary documents before the application, and seek expert advice in case of doubt.

*Şule Uluç, Murat Erdem,  
Sıla Öz*



# 10.

## SEASONAL EMPLOYMENT AGREEMENTS

*According to the labor force statistics published by the Turkish Statistical Institute (TÜİK) for 2024, 14.8% of total employment was in the agriculture sector, while 6.6% was in construction and 57.9% was in service sector.<sup>74</sup> In Türkiye, sectors that constitute a significant share of total employment, such as agriculture, construction, tourism, and food, often experience high labor demand only during certain periods of the year. To meet this fluctuating demand, the seasonal employment model is frequently implemented in these sectors. This study aims to examine the legal nature and practical applications of seasonal employment contracts, as well as to summarize the main discussions on the subject, in light of the Labor Law numbered 4857 (“**Labor Law**”),<sup>75</sup> its secondary legislation, Court of Appeals’s decisions, and relevant legal doctrine.*



Although certain working conditions for seasonal employment are regulated under Turkish law<sup>76</sup>, there is no explicit statutory definition of *seasonal work*. Instead, the concept is shaped with judicial decisions and legal doctrine. Seasonal work refers to work that, by its very nature, can be performed only during specific periods of the year. In legal doctrine, *seasonal work* is defined as “work carried out in workplaces where the activity is conducted only during a certain period of the year, or where the activity continues throughout the year but intensifies during particular seasons”.<sup>77</sup> Accordingly, seasonal employment contracts are described as “contracts concluded with the employees to perform work that occurs or is carried out at certain times of the year depending on the season and is repeated periodically.”<sup>78</sup> In connection with the definition and practical application of seasonal work, a number of issues remain subject to debate.

## Seasonal Employment Contract Types

Depending on the type of the seasonal employment contract, employee's working conditions and entitlements may vary. Therefore, determining the legal characterization of a seasonal contract is of significant importance.

Article 9 of the Labor Law stipulates that employment contracts may be concluded for either a definite or an indefinite term; however, the general rule is that employment contracts are presumed to be of indefinite duration. As per Article 11 of the Labor Law, “Fixed-term employment contract is a written agreement between the employer and the employee based on objective conditions such as the completion of a specific task or the occurrence of a specific event”. With this provision, the legislator seeks to prevent employers from circumventing certain statutory obligations by entering into fixed-term employment contracts. Accordingly, the law requires the existence of an objective condition for the conclusion of such contracts. In this respect, it is a matter of scholarly debate whether the fact that a job can be performed only during certain periods of the year, by its very nature, constitutes an objective reason on its own.

According to one view in legal doctrine, a fixed-term employment contract may be concluded based on the mutual intention of the parties and the seasonal nature of the work. Another view argues that seasonal work should be considered as part of the employer's ordinary business activity; therefore, there is no need for an objective reason that would justify the use of a fixed-term employment contract.

However, the prevailing opinion<sup>79</sup> in legal doctrine considers the concentration of work during certain periods of the year to constitute an objective reason for concluding a fixed-term employment contract. Nonetheless, if such contracts are repeatedly renewed over multiple seasons, they should be deemed indefinite-term contracts. Indeed, the precedents of the General Assembly of the Court of Appeals align with this dominant doctrinal view.<sup>80</sup>

In light of the above, if a seasonal employee is employed for only one season and not rehired in the following season, the fixed-term nature of the contract remains valid. However, if the employee continues to be employed by the same employer in subsequent seasons, the contract will be deemed an indefinite-term employment contract. Both the prevailing view in legal doctrine and the Court of Appeals hold as per Article 11/2 of the Labor Law<sup>81</sup> that, the seasonal nature of the work alone does not justify the use of successive fixed-term contracts.

## Implementation and Controversial Issues of Seasonal Employment Contracts

If a seasonal employment contract is not to be terminated, the suspension of the contract at the end of the season and the impact of the suspension practice are highly controversial and open to interpretation.

Whether the employment contract was originally concluded as an indefinite-term seasonal contract or a fixed-term seasonal contract that has converted into an indefinite-term contract due to the absence of an objective or justified reason, in both cases, if the contract is not terminated at the end of the season, it remains suspended during periods in which the employee is not actively working. During the suspension period, the employee is not obligated to perform work, and the employer is not

required to pay salaries or social security contributions. However, since the seasonal employment contract does not terminate during the suspension period, the parties' other obligations under the contract, apart from their essential duties, continue to exist. In other words, ancillary obligations arising from the employment relationship remain fully or partially in effect during the suspension period. For example, the employee's duty of loyalty, as well as the employer's duties to protect and supervise the employee and to act fairly, shall remain during the suspension period, unlike the essential obligations.<sup>82</sup>

There is a specific provision in the legislation regarding the termination of seasonal contracts at the end of the season. As per Article 29/7 of the Labor Law<sup>83</sup>, dismissals made at the end of a season are not considered mass lay-off.

However, the scope of Article 29/7 of the Labor Law is not entirely clear. If a seasonal employee is employed under a fixed-term seasonal contract, the provision of Article 29/7 should not apply at the end of the contract period. Conversely, if the employee is employed under an indefinite-term seasonal contract, the contract is suspended at the end of the season unless it is formally terminated. In this regard, there is a divergence of opinion in the doctrine and the Court of Appeals practices as to whether Article 29/7 should apply.

In legal doctrine, it is emphasized that Article 29/7 of the Labor Law explicitly refers to “dismissal” and, therefore, is concerned with the termination of employees working in seasonal or campaign-based jobs, rather than the suspension of the contract. In some of its decisions, the Court of Appeals has held that indefinite-term seasonal employment contracts do not automatically terminate at the end of the season, but are merely suspended until the start of the next working period. In supporting this view, the Court of Appeals refers to the provision in Article 29/7 stating that “the provisions on collective mass lay-offs shall not apply at the end of the season,” noting that this supports the interpretation of the contract as being suspended rather than terminated.<sup>84</sup> However, as stated in the doctrine, if a contract is already considered suspended, it is not technically terminated, and therefore the legislator would have no need to regulate this matter separately. For this reason, the Court of Appeals's reliance

on the aforementioned provision as a basis for the suspension of indefinite-term seasonal employment contracts is regarded in the doctrine as an approach that is not widely accepted.

Seasonal employees whose contracts are suspended should be reasonably notified before the start of the next season. Accordingly, the employer is required to inform the employee during the suspension period about the commencement of the new season. At the beginning of the new working period, the employer must reach out to the employees whose contracts are suspended and invite them to resume work. This communication by the employer does not constitute the formation of a new employment contract; it rather serves to summon the employee to fulfill their work obligations under the existing employment contract.<sup>85</sup>

Although there is no explicit regulation in the legislation regarding the procedure for inviting the employee to work before the new season, providing the notice in writing is important for evidentiary purposes. It is mandatory that the notice reaches the employee and that the employee is informed of the start of the season. If the employer fails to fulfill this obligation or does not invite the employee to work, it is regarded as a unilateral termination of the employment contract by the employer. Conversely, if the employee fails to respond to the call and does not commence work without a valid reason, the employment contract is deemed to have been unilaterally terminated by the employee.<sup>86</sup>

Termination provisions in seasonal employment contracts are generally subject to the standard rules of employment law. If an employee employed under a fixed-term seasonal contract for the first time has their contract terminated before the designated period without just cause, the employee would be entitled to payment for the remaining contract period and compensation for wrongful termination. On the other hand, the situation differs when the employment contract has converted into an indefinite-term contract or was concluded as indefinite from the outset. In indefinite-term contracts, if the employer does not summon the employee for the new season, the employee may be entitled to notice payment and to severance pay, if the eligibility requirements are satisfied.

There is a divergence of opinion in the doctrine regarding whether suspension periods should be included in the calculation of severance payment. One view argues that only the days actually worked should be counted<sup>87</sup>, while another opinion maintains that suspension periods should also be included in the length of service<sup>88</sup>. The Court of Appeals has adopted the first view, establishing the precedent that in seasonal employment, severance payment should be calculated solely based on the periods during which the employee actually worked.<sup>89</sup>

Seasonal employees occupy a different position compared to other employees with regard to annual paid leave. As per Article 53/3 of the Labor Law, seasonal employees are not granted the right to annual paid leave.<sup>90</sup> Judicial decisions have held that if a seasonal employee has actually worked for more than 11 months within a year, they become eligible to annual leave; otherwise, they would not be eligible to such entitlement. The rationale for this regulation is explained by the fact that employees have the opportunity to rest during the suspension period.<sup>91</sup>

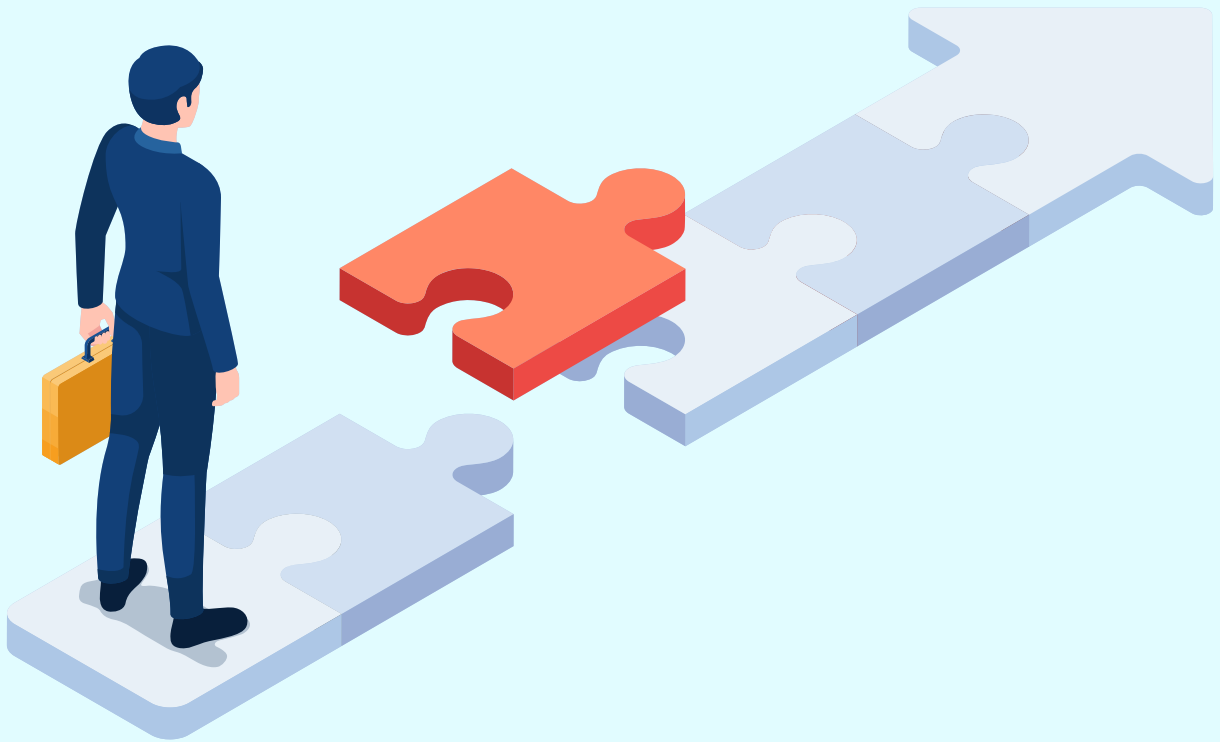
In conclusion, seasonal employment contracts are not explicitly regulated as a separate type of contract in the legislation. However, their nature and framework are shaped in light of doctrinal evaluations and decisions of the Court of Appeals, which is why seasonal employment contracts are regarded as a distinct type of contract. Whether a seasonal contract is fixed-term or indefinite may vary depending on the nature of the work and the employer's practices. Accordingly, the procedures for termination, the rights of the employee, and entitlements to notice pay and severance pay differ based on the contract's duration. It should be noted, however, that employees employed on a seasonal basis benefit from the same legal protections as other workers, and any violation of these obligations by the employer can result in significant compensation. The only exception concerns annual paid leave, for which seasonal workers are generally not entitled under the standard regime.

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# 11.

## MERGER CONTROL FILING STRATEGIES AND THEIR IMPACT ON THE DEAL MOMENTUM



*The determination of the purchase price in a merger and acquisition (“M&A”) transaction and the methodology to be used to either fix or adjust it is a fundamental part of the commercial negotiations. There are basically two approaches: the locked-box or the completion accounts. Both systems have their own benefits and shortcomings.*

The locked-box approach definitely entails price certainty and eliminates post-completion negotiations and saves time and money by bypassing drafting, negotiating, organizing, and implementing adjustment mechanisms. Since the exact pricing is agreed upon as of the locked-box date (corresponding to a pre-completion date) based on a set of pre-completion accounts, the purchaser cannot adjust the pricing unless there has been a “leakage”. Hence, this approach, on the one hand, rules out the risk of having to find additional funds after the transaction for post-completion payments, but on the other hand may fail to capture the actual value of the shares as of the completion.

Completion accounts approach enables the pricing to be adjusted up or down towards the real value in the completion accounts as of the completion date. The price is measured against an agreed measurement system (i.e. an agreed amount of working capital or net debt) based on a set of completion accounts to test if the target's financial position, as at the completion date, is consistent with the value in the share purchase agreement.

Normally, the completion accounts methodology is deemed more pro-purchaser and the locked-box approach is perceived more seller-friendly. However, depending on how long the “interim period” may last between the signing and the closing of the M&A deal, especially in a high-inflation economy with the effects of foreign currency exposure, the longer the interim period, the higher the sensitivities from both parties to a back-dated valuation pinpoint. At this stage, the importance comes into play of the measures to shorten the interim period and to expedite the conditions-precedent (“CP”) collection process. Lengthy, heavily drafted leakage clauses would also provide both parties with an incentive for an expedited CP completion process. The most fundamental CP element that cannot be legally or contractually excluded from the CP list is the antitrust filing. Since the antitrust filings mark the length of the interim period, the strategies to expedite this process are also a primary area to focus on in the lifecycle of an M&A deal.

M&A transactions triggering change of control among the participants reaching the turnover thresholds as set under Article 7 of the Law numbered 4054 on the Protection of Competition (“**Law No.**

**4054**”) <sup>92</sup> are subject to the approval of the Turkish Competition Board (“**Board**”). The rules setting the conditions for the merger control filing requirement before the Turkish Competition Authority (“**TCA**”) are set forth under Communiqué No. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board (“**Communiqué No. 2010/4**”). <sup>93</sup>

In principle, two cumulative conditions must be met for a transaction to be subject to the Board's approval: (i) a permanent change of control, and (ii) the turnover thresholds stipulated under Article 7 of Communiqué No. 2010/4 being exceeded. In the case of greenfield joint ventures, the additional requirement of “full-functionality” is assessed.

Pursuant to Article 10 of Law No. 4054, the Board must issue its decision within 30 days following the notification. However, under Article 11 of Communiqué No. 2010/4, where the information provided in the notification form is incomplete, the filing is deemed to have been made only upon submission of the missing or corrected information. Accordingly, if the TCA requests additional information deemed necessary for its competition law assessment, the 30-day review period stops and restarts upon the submission of the requested data. As a result, in practice, the 30-day review period may be prolonged even for transactions raising no substantive competition law concerns.

Although the Board's review period varies depending on its workload at the time of notification and the scope of information required for the substantive competition assessment of the transaction, the legal strategy underlying the filing plays a critical role in reducing the overall approval timeline. Competition lawyers handling merger control filings before the TCA must possess a thorough command of the M&A process, maintain up-to-date knowledge of the notified transaction's dynamics, understand the commercial interests and strategies of the parties, and be familiar with the TCA's decisional practice in analogous cases. In other words, the notification form should not be treated as a mere questionnaire; rather, it should be tailored to the specific characteristics of the transaction and the commercial priorities of the client, thereby ensuring a smoother clearance process and an expedited CP satisfaction.

## The “Short Form” Strategy

While the Turkish merger control regime is modelled after the EU merger control rules, Turkish law does not provide for a simplified or short-form notification procedure in theory. That said, the standard notification form annexed to Communiqué No. 2010/4 indicates that certain sections need only be filled if specific conditions are met. In particular, where there is no horizontal or vertical overlap between the parties' activities, and the transaction does not give rise to any affected markets in Türkiye, a shorter version of the notification form may suffice for the purposes of seeking the TCA's approval.

In such cases, a “short form strategy” may be adopted by anticipating the TCA's potential information requests, supplying non-standard data upfront based on practical experience, and thereby facilitating a more expedient review. Similarly, where affected markets exist but the transaction's competitive effects are clearly negligible, certain information not strictly required under the short form may nonetheless be provided voluntarily to mitigate the risk of subsequent information requests. Moreover, a careful demand- and supply-side substitutability analysis may demonstrate that no affected markets arise in the first place. Although such preparatory steps may slow down the drafting phase, they often expedite the overall clearance

process.

The shorter form is generally preferred by commercial teams and financial advisors managing the transaction, as it requires less market information. Nonetheless, it is not invariably the most effective option. The Board's decisional practice in the relevant sectors, the level of detail previously required in its competition assessments, and the potential for competition concerns under alternative product or geographic market definitions must all be considered in determining the scope of the filing. Otherwise, time saved during the drafting phase may ultimately be lost in responding to the TCA's follow-up information requests.

It is therefore essential that arguments advanced in a short form filing rest on robust analytical foundations. For example, where overlaps between the parties' activities are dismissed on the basis of product market definition, a weak or unsupported economic assessment may prompt the Board to conduct a more detailed review. Similarly, clear and well-structured presentation of the parties' global and Turkish activities, as well as their pre- and post-transaction control structures, is particularly important in short form structures.

## The "Long Form" Strategy

Where the parties' activities are interrelated in Türkiye, or where potential overlaps could be identified under a flexible interpretation, a "long form" strategy may be preferable. Even where a short form filing might suffice from a strictly legal perspective, providing comprehensive information upfront (particularly economic data addressing potential overlap scenarios) can be an effective way to pre-empt follow-up requests and facilitate timely clearance.

For instance, even if no direct supply-purchase, input-output or complementary relationship exists between the parties, overlaps within the same ecosystem may trigger additional scrutiny. In such cases, supplying detailed information regarding potential overlap analyses and affected markets at the outset can shorten

the review process. Moreover, supplementing the Board's precedents with independent market studies, consumer surveys, and technical documentation regarding the production process or product portfolio may help frame the competitive assessment more effectively.

These strategic considerations also shape the contractual framework of M&A transactions, particularly with respect to CPs and the allocation of rights and obligations among the parties. For instance, if a private equity fund aims to divest a portfolio company swiftly to finance a new acquisition, timing considerations must be balanced against the legal risks associated with merger control approval and the duty to provide accurate information to the TCA. Diverging interests among the parties may create conflicts, and the design of the notification strategy may be decisive in resolving them.

Indeed, where clearance cannot be obtained within the contractual timeframe, issues such as termination rights or purchase price adjustments may arise. Hence, a proactive and well-structured competition law analysis is essential for drafting accurate contractual provisions. Similarly, the contractual consequences of a potential intervention by the Board should be addressed in consultation with competition law experts to ensure that the legal effects of the Board's decisions are appropriately reflected in the transaction documents.

Merger notifications before the Authority should not be regarded merely as procedural regulatory filings but as strategic milestones capable of shaping the overall momentum of an M&A transaction. Competition lawyers' role in this process extends well beyond template-based assessments; rather, a forward-looking, transaction-specific strategy integrating both legal and commercial perspectives is indispensable for ensuring that M&A transactions are completed smoothly and in a timely manner.



**Senem Denктаş, Hazar Başar**

## 12.

## DELVING INTO FINANCIAL ASSISTANCE RULES IN ACQUISITION FINANCING TRANSACTIONS



*One of the most discussed topics under Turkish law, at the intersection of M&A and banking and finance transactions, is the financial assistance prohibition, which essentially aims to prevent companies from providing financial assistance to third parties to acquire their own shares, otherwise known as a leveraged buyout. In this article, we will review the source and purpose of this prohibition and discuss the current regime under the Turkish Commercial Code, as well as alternatives and consequences.*

## Financial Assistance: Definition

Article 380 of the Turkish Commercial Code numbered 6102 (“TCC”)<sup>94</sup> sets forth that a joint stock corporation, with the purpose of facilitating the acquisition of its own shares, cannot provide advance funding, a loan or a security interest to a third party. Otherwise, these transactions shall be deemed null and void. The legislative reasoning behind the TCC explains that the wording of “advance funding, loan or security” should be interpreted broadly in accordance with the legislative intent. This provision is titled “Circumvention of the Law” and aims to prevent parties from exploiting legal loopholes to circumvent the prohibition in acquisition financing transactions. The TCC sets forth a less strict regime compared to the abrogated Turkish Commercial Code which was numbered 6762.

## Source and Purpose: Practice in Türkiye

A proper understanding of Article 380 of the TCC requires an examination of the preceding provision. Article 379 of the TCC provides that a joint stock corporation cannot acquire its own shares or accept them as a pledge for consideration exceeding one-tenth of its issued or paid-in capital, or in an amount that would cause this limit to be exceeded as a result of such acquisition. The first paragraph of Article 379 further states that this provision also applies to shares acquired by or pledged in favor of a third party in its own name but on behalf of the company. The term “financial assistance” refers to situations where a company provides financing to enable the acquisition of its own shares or shares of its subsidiary.

The financial assistance rule set forth in Article 380 of the TCC affects the structure of leveraged buyout transactions (“LBO”) in Türkiye. Typically, in an LBO transaction, the acquirer purchases the target using a loan that is funded and collateralized by the target’s own revenues and assets. By borrowing funds, parties reduce acquisition costs, creating the “leverage” effect.

## Alternatives Observed in Market Practice

In Turkish practice, one of the alternatives used to mitigate the risks associated with the breach of financial assistance rules is merger. In this alternative, acquirers of the shares in a Turkish target company (“Target”) incorporate a new company (“NewCo”) in Türkiye and NewCo borrows the funds necessary for the acquisition. After the closing of the acquisition, the Target and NewCo merge with each other by way of a downstream merger (NewCo merging into Target) or an upstream merger (Target merging into NewCo). The prevailing scholarly opinion is that the financial assistance restriction should not apply to (especially upstream) mergers since the Target would dissolve and there would be no legal entity that could breach the financial assistance rule. Under the TCC, an indebted company may merge with another company, which indicates legislative intent to permit the acquiring company to benefit from the target’s assets and revenues in merger transactions. In a downstream merger scenario, the Target assumes NewCo’s loan repayment obligations, creating uncertainty regarding compliance with the financial assistance prohibition, as the downstream merger transfers the loan obligation to the Target and may therefore constitute financial assistance.

Another, less common alternative in practice is to convert the Target into a limited liability partnership before the acquisition. Some legal scholars argue that financial assistance rules regulated under Article 380 of the TCC are applicable to joint stock corporations but not to limited liability partnerships. However, conversion is often a time-consuming exercise, and there are concerns about increased tax liability and administrative burden on the transfer of shares in limited liability partnerships.

## Consequences of Circumventing the Law

If Article 380 of the TCC is circumvented, any person with a legitimate interest may claim the absolute nullity of the underlying transaction. However, prevailing scholarly opinions suggest that creditors must first exhaust all available legal remedies against the company to collect their receivables before claiming absolute nullity.

There are various opinions regarding the application, enforceability, and scope of Article 380, and case law remains limited. Nevertheless, it is clear that a JSC must not provide financial assistance for the acquisition of its own shares. Since circumventing the financial assistance rules renders the underlying transaction null and void, all parties should adopt a prudent approach to ensure legal compliance and transaction certainty.

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## ENDNOTES

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  - <sup>5</sup> Standing Order Re Artificial Intelligence, Eastern District of Pennsylvania (U.S. District Court), 6 June 2023, <https://www.paed.uscourts.gov/sites/paed/files/documents/procedures/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf>
  - <sup>6</sup> Standing Order for Civil Cases Before Judge Gabriel A. Fuentes (rev'd May 31, 2023), U.S. District Court for the Northern District of Illinois, [https://www.ilnd.uscourts.gov/\\_assets/\\_documents/\\_forms/\\_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20%28002%29.pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20%28002%29.pdf)
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  - <sup>8</sup> Federal Rules of Civil Procedure. Rule 11: Signing pleadings, motions, and other papers; representations to the court; sanctions. Legal Information Institute. [https://www.law.cornell.edu/rules/frcp/rule\\_11](https://www.law.cornell.edu/rules/frcp/rule_11)
  - <sup>9</sup> Lacey v. State Farm, C.D. Cal., 2025, <https://s3.documentcloud.org/documents/25940991/lacey-v-state-farm.pdf>
  - <sup>10</sup> Ayinde v London Borough of Haringey; Al-Haroun v Qatar National Bank, High Court of Justice (England and Wales, 6 June 2025), <https://www.judiciary.uk/wp-content/uploads/2025/06/Ayinde-v-London-Borough-of-Haringey-and-Al-Haroun-v-Qatar-National-Bank.pdf>
  - <sup>11</sup> Solicitors Regulation Authority (SRA), the regulatory body for solicitors in England and Wales, <https://www.sra.org.uk/>
  - <sup>12</sup> Bar Standards Board (BSB), the regulator of barristers and specialised legal services businesses in England and Wales, <https://www.barstandardsboard.org.uk/>
  - <sup>13</sup> Garner v. Kadince, Utah Court of Appeals, No. 20250188-CA (Utah Ct. App. published, 2025), <https://cases.justia.com/utah/court-of-appeals-published/2025-20250188-ca.pdf?ts=1748025697>.
  - <sup>14</sup> And Justice for All, a Utah-based nonprofit providing free or low-cost legal services to vulnerable groups -including low-income individuals, people with disabilities, the elderly, and victims of domestic violence- through partnerships with the Disability Law Center, Utah Legal Services, and the Legal Aid Society of Salt Lake, serving approximately 25,000 people annually, available at <https://andjusticeforall.org>
  - <sup>15</sup> Sentenza Tribunale di Torino, Sezione Lavoro, Sent. n. 1018/2025 (16 September 2025), [https://websitedc.s3.amazonaws.com/documents/AI\\_Allucination\\_-\\_Turin\\_Court\\_n.\\_1018-2025.pdf](https://websitedc.s3.amazonaws.com/documents/AI_Allucination_-_Turin_Court_n._1018-2025.pdf)
  - <sup>16</sup> Published in the Official Gazetted dated 4 February 2011 and numbered 27836.
  - <sup>17</sup> Art. 119 and 194 TCCP.
  - <sup>18</sup> Art. 29 TCCP.
  - <sup>19</sup> Art. 327 TCCP
  - <sup>20</sup> Published in the Official Gazette dated 7 April 1969 and numbered 13168.
  - <sup>21</sup> Art. 34 LA
  - <sup>22</sup> In its decision dated 6 March 2025 (E.2025/50, K.2025/47), the Constitutional Court annulled Articles 134 and 135 of the Attorneys' Act on the grounds that they violated the principles of legal certainty and proportionality. The Court emphasized, in particular, that the lack of foreseeability as to which acts corresponded to which disciplinary sanctions, coupled with the broad and unchecked discretion vested in bar association bodies, contravened the rule of law principle (Constitution, Art. 2). The decision was published in the Official Gazette on 22 May 2025, No. 32907. See Official Gazette, "Constitutional Court Decision," 22.05.2025, No. 32907 <https://www.resmigazete.gov.tr/22-05-2025>
  - <sup>23</sup> Published in the Official Gazetted dated 4 February 2011 and numbered 27836.
  - <sup>24</sup> Published in the Official Gazetted dated 12 October 2004 and numbered 25611.
  - <sup>25</sup> Art 1 AL
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<sup>26</sup> Art 257 TPC.

<sup>27</sup> European Parliament and Council, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending certain Union legislative acts (Artificial Intelligence Act), OJ L, 2024/1689, 12.7.2024, p. 1–132. Available at: <https://eur-lex.europa.eu/eli/reg/2024/1689/oj>

<sup>28</sup> Published in the Official Gazette dated 30 December 2012 and numbered 28513.

<sup>29</sup> Published in the Official Gazette dated 23 January 2014 and numbered 28891.

<sup>30</sup> Published in the Official Gazette dated 23 January 2014 and numbered 28891.

<sup>31</sup> A special purpose acquisition company is a type of SPV created specifically to raise capital through an IPO in order to acquire an existing private company.

<sup>32</sup> Altice Group Lux v. Commission (Case C-746/21 P) EU:C:2023:83.

<sup>33</sup> United States v. XCL Res. Holdings, LLC, et al., No. 1:25-cv-00041 (D.D.C. Jan. 7, 2025).

<sup>34</sup> CADE case no 08700.000974/2020-60.

<sup>35</sup> Published in the Official Gazette dated 13 December 1994 and numbered 22140.

<sup>36</sup> TCA decision dated 4 April 2024 and numbered 24-16/390-148.

<sup>37</sup> The Board Announcement on 26 June 2025 on acquisition Tekfen shares.

<sup>38</sup> Published in the Official Gazette dated 19 June 1932 and numbered 2128.

<sup>39</sup> Published in the Official Gazette dated 14 February 2011 and numbered 27846.

<sup>40</sup> Published in the Official Gazette dated 4 February 2011 and numbered 27836.

<sup>41</sup> Official Gazette dated 14 February 2025 and numbered 32813.

<sup>42</sup> Official Gazette dated 20 September 2025 and numbered 33023.

<sup>43</sup> Collective (kollektif) companies, limited partnerships (komandit), joint stock companies (anonim), limited partnerships with capital divided into shares (sermayesi paylara bölünmüş komandit), and limited liability companies (limited şirketler) and cooperatives (kooperatifleri)

<sup>44</sup> This time period was 2 months before the amendment introduced by the Amending Communiqué.

<sup>45</sup> Circular on “Resolutions of the General Assembly and Board of Directors/Managers Submitted in Registration Applications” dated 28 July 2025 and numbered E-50035491-431.04-00111808832

<sup>46</sup> Published in the Official Gazette dated 7 February 2013 and numbered 28561.

<sup>47</sup> Published in the Official Gazette dated 27 December 2020 and numbered 31351.

<sup>48</sup> Published in the Official Gazette dated 17 December 2004 and numbered 25673.

<sup>49</sup> Published in the Official Gazette dated 11 October 2006 and numbered 26323.

<sup>50</sup> Published in the Official Gazette dated 27 November 2007 and numbered 2672.

<sup>51</sup> The Constitutional Court exercises its authority of constitutional review through two principal procedures: (i) the action for annulment (iptal davası) and the objection procedure (itiraz yolu). The former constitutes an abstract constitutional review of norms (soyut norm denetimi), whereas the latter involves a concrete constitutional review of norms (somut norm denetimi). The essential distinction between these two mechanisms lies in the procedure of the review: in the objection procedure, the constitutionality of the rule in question is reviewed through a pending lawsuit.

<sup>52</sup> Published in the Official Gazette dated 8 December 2001 and numbered 24607.

<sup>53</sup> Published in the Official Gazette dated 19 April 2024 and numbered 32522.

<sup>54</sup> Published in the Official Gazette dated 18 March 2025 and numbered 32845.

<sup>55</sup> Ministry of Family and Social Policies of the Republic of Türkiye. “Türkiye Divorce Reasons Research” TBNA 2014, p. 25, Access: <https://www.aile.gov.tr/uploads/athgm/uploads/pages/arastirmalar/tbna2014-kitap.pdf> (Access Date: 05.10.2025).

<sup>56</sup> Articles 166/2, 174/1, 175, 181, 236/2 and 252/1 of the Civil Code.

<sup>57</sup> Didin, Dilara Buket. “Fault: An Assessment in the Context of Turkish Divorce Law.” BUHFD, Volume 19, Issue: 218, 2024, p. 421.

<sup>58</sup> Adultery – Article 161 of the Civil Code, Attempted murder or cruel or humiliating treatment – Article 162 of the Civil Code, Committing a crime and leading a disgraceful life – Article 163 of the Civil Code, Abandonment – Article 164 of the Civil Code, Mental illness – Article 165 of the Civil Code.

<sup>59</sup> Ormancı, Pınar Altınok. “The Implications of the Revision of French Divorce Law: Evaluations for a Possible Revision of Turkish Divorce Law.” Ankara University Law Faculty Journal, 71 (4) 2022, p. 1440.

- <sup>60</sup> Velidedeoğlu, Hıfzı Veldet. Turkish Civil Law, Volume II Family Law. Nurgök Printing House, 1960, p. 185.
- <sup>61</sup> *Nemo auditur propriam turpitudinem allegans.*
- <sup>62</sup> Court of Appeals Assembly of Civil Chambers, E. 2022/1268, K. 2023/1189, 11/29/2023; Similar: Court of Appeals 2. Civil Chamber, E. 2023/2966, K. 2023/6229, 14.12.2023.
- <sup>63</sup> Ministry of Family and Social Policies of the Republic of Türkiye. “Türkiye Divorce Reasons Research” TBNA 2014, p. 35, Access: <https://www.aile.gov.tr/uploads/athgm/uploads/pages/arastirmalar/tbna2014-kitap.pdf> (Access Date: 05.10.2025).
- <sup>64</sup> Court of Appeals Assembly of Civil Chambers, E. 2020/97, K. 2021/241, 11.03.2021; Similar: Court of Appeals Assembly of Civil Chambers, E. 2020/175, K. 2021/202, 04.03.2021; Court of Appeals Assembly of Civil Chambers, 2020/303, K. 2021/242, 11.03.2021.
- <sup>65</sup> “Minister of Justice Tunç spoke about the family mediation system” (Access: <https://www.adalet.gov.tr/adalet-bakani-tunc-aile-arabuluculuk-sistemine-iliskin-konustu>) (Access Date: 24.10.2025).
- <sup>66</sup> Published in the Official Gazetted dated 20 March 2012 and numbered 28239.
- <sup>67</sup> Turkish Ministry of Justice, Statistics on the Number of Cases Subject to Protection Orders Issued and Cases Subject to Decisions Pursuant to Law No. 6284 (2006-2016), Access: [https://evicisiddet.adalet.gov.tr/dosya/up/icerik/6284\\_adli\\_sicil\\_istatistik.pdf](https://evicisiddet.adalet.gov.tr/dosya/up/icerik/6284_adli_sicil_istatistik.pdf) (Access Date: 10.05.2025).
- <sup>68</sup> Published in the Official Gazetted dated 9 May 1985 and numbered 18749.
- <sup>69</sup> Published in the Official Gazetted dated 23 July 1983 and numbered 18113.
- <sup>70</sup> Published in the Official Gazetted dated 31 May 2012 and numbered 28309.
- <sup>71</sup> Published in the Official Gazetted dated 12 December 2024 and numbered 32750.
- <sup>72</sup> Published in the Official Gazetted dated 11 September 2025 and numbered 33014.
- <sup>73</sup> Published in the Official Gazette dated 14 February 2011 and numbered 27846.
- <sup>74</sup> TÜİK, 2024 Labor Force Statistic, Access: <https://data.tuik.gov.tr/Bulten/Index?p=Isgucu-Istatistikleri-2024-54059#:~:text=%C4%B0stihdam%20edilenlerin%20%14%2C8',sekt%C3%B6r%C3%BCn%C3%BCn%20pay%C4%B1%20ise%20de-C4%9Fi%C5%9Fim%20g%C3%B6stermedi.> (Access Date: 29.09.2025).
- <sup>75</sup> Published in the Official Gazetted dated 10 June 2003 and numbered 25134.
- <sup>76</sup> Articles 29/7 and 53/3 of the Labor Law; Article 12 of the Annual Paid Leave Regulation.
- <sup>77</sup> Süzek, Sarper. Labor Law, Beta Printing, 2023, p. 270.
- <sup>78</sup> Yardımcıoğlu, Didem. Seasonal Employment Contracts in Turkish Labor and Social Security Law. On İki Levha Printing, 2020, p. 110
- <sup>79</sup> Gümrükçüoğlu, Yeliz Bozkurt. Fixed-Term Employment Contracts in Turkish Labor Law. Vedat Printing House, pp. 208-209; Kar, Bektaş. “Seasonal Work.” MESS-Sicil, 2006, p. 72; Yıldız, Gaye Burcu. “Seasonal Employment Contract.” Legal Labor Law and Social Security Law Journal, Edit 25, 2010, p. 45; Yardımcıoğlu, Didem. Seasonal Employment Contracts in Turkish Labor and Social Security Law. On İki Levha Printing, 2020, p. 138.
- <sup>80</sup> Court of Appeals General Assembly of Civil Chambers E. 2018/827 and K. 2018/1461 dated 18 October 2018: “Seasonal employment contracts may be concluded either for a fixed term or an indefinite term in accordance with Article 11 of the Labor Law No. 4857. A fixed-term employment contract concluded for a single season automatically terminates at the end of that season, in which case the employee is not entitled to notice pay or severance pay. Conversely, if a fixed-term seasonal employment contract is concluded between the employee and employer and the employment relationship continues in subsequent years through successive seasonal contracts, the contract will be deemed as an indefinite-term employment contract pursuant to the final paragraph of the aforementioned article.” (Similar: Court of Appeals General Assembly of Civil Chamber, E. 2018/179, K. 2018/683, 4 April 2018; Court of Appeals General Assembly of Civil Chamber, E. 2015/1115, K. 2015/2541, 11 November 2015.).
- <sup>81</sup> “A fixed-term employment contract cannot be consecutively renewed multiple times (chained) without a substantial reason; otherwise, the employment contract is considered to be of indefinite duration from the beginning.”
- <sup>82</sup> Yardımcıoğlu, Didem. Seasonal Employment Contracts in Turkish Labor and Social Security Law. On İki Levha Printing, 2020, pp. 249-250.
- <sup>83</sup> “Regarding the dismissal of employees working in seasonal and campaign-based work, if the dismissal is based on the nature of such work, the provisions on mass layoffs shall not apply.”

<sup>84</sup> Court of Appeals 9. Civil Chamber, E. 2011/31873, K. 2011/34505, 4 October 2011; Court of Appeals 9. Civil Chamber, E. 2010/30996, K. 2011/4469, 21.02.2011; Court of Appeals 9. Civil Chamber, E. 2007/33949, K. 2008/32108, 25.11.2008; Court of Appeals 7. Civil Chamber, E. 2013/4741, K. 2013/12001, 26 June 2013; Court of Appeals 7. Civil Chamber, E. 2014/4022, K. 2014/7769, 9 April 2014; Court of Appeals 7. Civil Chamber, E. 2015/7067, K. 2016/19345, 14 November 2016.

<sup>85</sup> Kar, Bektaş. “Seasonal Work.” MESS-Sicil, 2006, page 74; Akı, Erol. “Working Issues in Seasonal Job.” page 255, Acces: <https://www.tuhis.org.tr/pdf/5315.pdf>.

<sup>86</sup> Court of Appeals General Assembly of Civil Chambers E. 2017/1560, K. 2021/884, 1 July 2021: “In general, in seasonal employment, the employee must be called to work by the employer before the start of the season. If an employee whose contract is suspended is not summoned at the end of the suspension period for the new season, the employment contract is generally considered to have been terminated by the employer. If the employee fails to report to work despite being summoned, the contract may be deemed terminated either by the employer for just cause due to absenteeism or by the employee. Nevertheless, during the suspension period, the employment contract may be terminated by mutual agreement at any time, as there is no legal provision preventing this.” (Similar: Court of Appeals General Assembly of Civil Chambers E. 2016/603, K. 2020/462, 24 June 2020).

<sup>87</sup> Çenberci, Mustafa. Labor Law Interpretation. Olgaç Printing, 5. Publish, p. 311.

<sup>88</sup> Süzek, Sarper. Labor Law, Beta Printing, 2024, p. 802

<sup>89</sup> Court of Appeals 22. Civil Chamber E. 2018/5510, K. 2018/12036, 17 May 2018: “If an employee has worked in seasonal jobs, severance pay should be calculated based on the periods during which the employee actually performed seasonal work. In other words, the time spent in suspension does not constitute actual work and, therefore, is not counted toward seniority for severance purposes.”

<sup>90</sup> Due to their nature, employees working in seasonal or campaign-based jobs lasting less than one year are not subject to the provisions of this Law regarding annual paid leave.

<sup>91</sup> Court of Appeals General Assembly of Civil Chambers E. 2016/2662, K. 2021/544, 29 April 2021: “In this case, the court held that once the employee has worked 11 months or more during a year under a seasonal employment contract, their work can no longer be classified as seasonal. Consequently, if annual leave pay has been awarded for the years following this 11-month period, the employee is entitled to annual leave only for the years in which they actually worked more than 11 months. Therefore, it is not appropriate to aggregate all days worked during the period and calculate annual leave pay based on the total.”

<sup>92</sup> Published in the Official Gazette dated 13 December 1994 and numbered 22140.

<sup>93</sup> Published in the Official Gazette dated 7 October 2010 and numbered 27722.

<sup>94</sup> Published in the Official Gazette dated 14 February 2011 and numbered 27846.



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